

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

STATE OF NEVADA, *ex rel.* its  
DEPARTMENT OF CORRECTIONS,

Appellant,

v.

PATRICIA DEROSA,

Respondent.

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Electronically Filed  
Jan 30 2020 10:44 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
Supreme Court Case No.: 77704

Dist. Court Case No. 18 OC 00150 1B

**MOTION TO WITHDRAW AS COUNSEL FOR  
RESPONDENT PATRICIA DEROSA**

THOMAS J. DONALDSON and SUE S. MATUSKA of the law firm DYER LAWRENCE, LLP, hereby move this Court for an Order allowing said attorneys to withdraw as counsel for Respondent PATRICIA DEROSA. This Motion is made and based upon Nevada Rule of Appellate Procedure ("NRAP") 46(e), Supreme Court Rule ("SCR") 46, Nevada Rule of Professional Conduct

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("NRPC") 1.16, the Memorandum of Points and Authorities which follows, the affidavit of THOMAS J. DONALDSON and any argument this Court may choose to entertain.

DATED this 30<sup>th</sup> day of January, 2020.

DYER LAWRENCE, LLP

By: 

Thomas J. Donaldson, Esq.  
Nevada Bar No. 5283  
Sue S. Matuska, Esq.  
Nevada Bar No. 6051  
Dyer Lawrence, LLP  
2805 Mountain Street  
Carson City, NV 89703  
Attorneys for Respondent  
Patricia DeRosa

#### MEMORANDUM OF POINTS AND AUTHORITIES

NRAP 46(e)(3) provides that a motion for withdrawal of counsel shall “clearly state the reasons for the attorney’s withdrawal consistent with SCR 46 and NRPC 1.16.”

SCR 46 provides, in pertinent part, that an “attorney in an action . . . may be changed at any time before judgment or final determination . . . 1. [u]pon the order of the court or judge thereof on the application of the attorney or the client.” NRPC 1.16(b)(1) provides, in pertinent part, that a “lawyer may withdraw from representing a client if. . . [w]ithdrawal can be accomplished without material adverse effect on the interests of the client.” NRPC 1.16(b)(5) allows withdrawal when “[t]he client fails substantially to fulfill an obligation to the lawyer regarding the lawyer’s services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled.”

NRPC 1.16(b)(6) also allows withdrawal when “[t]he representation will result in an unreasonable financial burden on the lawyer . . . .”

In the case at hand, briefing is complete. Thus, the matter is pending the Court’s ruling and there is no immediate need for participation of a new counsel such that Respondent Patricia DeRosa would be adversely affected by withdrawal of present counsel.

Additionally, Respondent DeRosa initially retained present counsel to represent her in the underlying favorable administrative appeal of her employment termination by Appellant. Present counsel’s representation of Respondent DeRosa in successfully defending Appellant’s petition for judicial review in the First Judicial District Court of Nevada and in the instant appeal was through the Nevada Corrections Association (NCA), of which Respondent DeRosa was a member. However, NCA dissolved effective December 31, 2019, and is in the process of winding up its business affairs.

Undersigned counsel notified Respondent DeRosa on December 19, 2019, and followed up on January 16, 2020, that due to NCA’s dissolution her continued representation by the undersigned required the payment of an outstanding balance on her existing account and a new retainer deposit, and in the event that said payments could not be made, undersigned intended to file a motion to withdraw as counsel pursuant to NRAP 46(e) and that a copy of that motion would be sent to her. Respondent DeRosa confirmed on January 22, 2020, that she received counsel’s communications, has applied for membership in another labor organization, hopefully, to continue present counsel’s representation, and will be sending monthly payments to pay off the outstanding balance, but does not have the financial means for a new retainer for continued representation. *See* Affidavit of Thomas J. Donaldson attached hereto as Exhibit A. Therefore, Respondent DeRosa has failed substantially to fulfill an obligation to undersigned regarding undersigned’s legal services, has been

given reasonable warning that undersign will withdraw unless the obligation is fulfilled, and continued representation of Respondent DeRosa will result in an unreasonable financial burden on undersigned counsel pursuant to NRPC 1.16(b)(5) and (6).

WHEREFORE, Counsel respectfully requests that the Court grant THOMAS J. DONALDSON and SUE S. MATUSKA of the law firm DYER LAWRENCE, LLP, leave to withdraw as counsel for Respondent DeRosa in this matter, and grant them such other relief as is just and proper.

DATED this 30<sup>th</sup> day of January, 2020.

DYER LAWRENCE, LLP

By: 

Thomas J. Donaldson

Nevada Bar No. 5283

Sue S. Matuska

Nevada Bar No. 6051

Attorneys for Respondent

Patricia DeRosa

**EXHIBIT "A"**

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**AFFIDAVIT OF COUNSEL IN SUPPORT OF  
MOTION TO WITHDRAW AS COUNSEL FOR RESPONDENT PATRICIA DEROSA**

STATE OF NEVADA       )  
                                  ) ss.  
CARSON CITY            )

I, Thomas J. Donaldson, declare and say:

1. I am counsel of record for Respondent, Patricia DeRosa. I have personal knowledge of the matters set forth in this Affidavit, and if called as a witness, could testify competently regarding those facts.

2. On March 27, 2018, Respondent DeRosa retained me and the firm of Dyer Lawrence, LLP, to represent her in the matter of the administrative appeal of her termination from service with the Appellant State of Nevada, *ex rel.* its Department of Corrections.

3. To date, Respondent DeRosa has a balance on her account.

4. Affiant's representation of Respondent DeRosa in successfully defending Appellant's petition for judicial review in the First Judicial District Court of Nevada and in the instant appeal was through the Nevada Corrections Association (NCA), of which Respondent DeRosa was a member.

5. NCA dissolved effective December 31, 2019, and is in the process of winding up its business affairs.

6. On December 19, 2019, and January 22, 2020, I emailed Respondent DeRosa to inform her of NCA's anticipated dissolution, that her continued representation by this law firm required her to pay the outstanding balance and to remit an additional retainer payment, and in the event that said payments could not be made, Affiant intended to file a motion to withdraw as counsel pursuant to NRAP 46(e) and that a copy of a that motion would be sent to her.

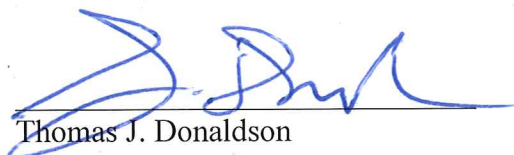
7. On January 22, 2020, Respondent DeRosa emailed me indicating that she received my prior email messages, has applied for membership in another labor organization, hopefully, to continue Affiant's representation of her in this matter, and will be sending monthly payments to pay off the outstanding balance, but does not have the financial means for a new retainer for continued representation.

8. Based upon Respondent DeRosa's response, Affiant believes that Respondent DeRosa has failed substantially to fulfill an obligation to me and Dyer Lawrence, LLP, regarding our services, has been given reasonable warning that we will withdraw unless the obligation is fulfilled, which will result in an unreasonable financial burden on Affiant and Dyer Lawrence, LLP, and will not be affected adversely by withdrawal of present counsel.

I declare under penalty of perjury that the foregoing is true and correct of my own knowledge, except as to matters therein set forth on information and belief, and as to those matters, I believe them to be true.

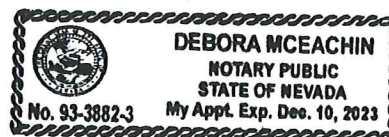
FURTHER YOUR AFFIANT SAYETH NAUGHT.

Executed this 30<sup>th</sup> day of January, 2020, at Carson City, Nevada.

  
Thomas J. Donaldson

SUBSCRIBED and SWORN to before  
me this 30<sup>th</sup> day of January, 2020.

  
Notary Public



### CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Dyer Lawrence, LLP and that on the 30<sup>th</sup> day of January, 2020, I caused a true and correct copy of the within **MOTION TO WITHDRAW AS COUNSEL FOR RESPONDENT PATRICIA DEROSA**, to be delivered via electronic and U.S. mail to:


Patricia DeRosa  
3309 Ponderosa Dr  
Carson City, NV 89701  
[pattyderosa@att.net](mailto:pattyderosa@att.net)

and to be delivered via electronic mail to the following persons:

Cameron P. Vandenberg  
Chief Deputy Attorney General  
[cvandenberg@ag.nv.gov](mailto:cvandenberg@ag.nv.gov)

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Debora McEachin