

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL WHITFIELD,
Appellant,

vs.

NEVADA STATE PERSONNEL
COMMISSION; STATE OF NEVADA
DEPARTMENT OF
ADMINISTRATION; LORNA WARD,
APPEALS OFFICER; AND THE
STATE OF NEVADA DEPARTMENT
OF CORRECTIONS, AS EMPLOYER,
Respondents.

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Elizabeth A. Brown
Clerk of Supreme Court

Case No. 79718

District Court Case No.

CV19-00641

APPEAL

**From the Second Judicial District Court
The Honorable Kathleen Drakulich, District Judge**

MOTION TO WITHDRAW AS COUNSEL FOR APPELLANT

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Introduction

Appellant Michael Whitfield, originally acting *pro se*, filed the notice of appeal to challenge the district court's dismissal of his petition for judicial review. This Court later referred this appeal to the Legal Aid Center of Southern Nevada to obtain pro bono representation for Mr. Whitfield. Dkt. No. 19-48549 (Nov. 27, 2019). Through that process, undersigned counsel agreed to represent Mr. Whitfield, along with two student-practice certified attorneys under Supreme Court Rule 49.3 and through the Partners in Pro Bono Program (collectively, "Counsel"). Dkt. No. 20-03673 (Jan. 27, 2020).

Counsel subsequently filed opening and reply briefs on behalf of Mr. Whitfield and argued on his behalf before the En Banc Court on March 1, 2021. This Court recently issued a published opinion in this appeal, affirming the district court's decision. Dkt. No. 21-21959 (July 29, 2021).

Mr. Whitfield has notified Counsel that he wishes to *personally* challenge that decision by filing a *pro se* petition for rehearing under NRAP 40(b)(2). To accommodate that request, Counsel now moves to withdraw from this appeal pursuant to NRAP 46(e)(3).

Argument

Nevada Rule of Appellate Procedure 46(e) governs the withdrawal of an attorney in a civil appeal and requires that the withdrawing attorney (1) file a motion with the Court stating reasons for “withdrawal consistent with SCR 46 and RPC 1.16” and (2) serve a copy of the motion on the client and the adverse party. NRAP 46(e)(3).

Supreme Court Rule 46 states that an attorney “may be changed at any time before judgment or final determination . . . [u]pon consent of the attorney, approved by the client.” SCR 46(1). And Nevada Rule of Professional Conduct 1.16(b) states “a lawyer may withdraw from representing a client if . . . (1) [w]ithdrawal can be accomplished without material adverse effect on the interests of the client; . . .or (7) [o]ther good cause for withdrawal exists.” RPC 1.16(1),(7).

Here, SCR 46 is satisfied because Counsel has consented to withdraw from the remainder of this appeal to allow Mr. Whitfield to file a petition for rehearing, which he has requested to do *pro se*. And RPC 1.16(b) is satisfied because Counsel’s withdrawal will not have an adverse effect on Mr. Whitfield. Counsel diligently prosecuted this appeal to obtain a decision from the Court, and Mr. Whitfield now wishes

to pursue his own arguments in challenging that decision. Further participation of Counsel would be of no additional benefit to him.

Finally, because SCR 46 and RPC 1.16 are satisfied, and Counsel intends to serve the instant Motion upon Mr. Whitfield by both mail and e-mail, the requirements of NRAP 46(e) are satisfied.

Conclusion

Based on the foregoing, Appellant and his Counsel respectfully request that the Court **GRANT** this motion and permit Counsel to withdraw from this appeal.

DATED: August 13, 2021

SNELL & WILMER L.L.P.

/s/ Kelly H. Dove
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