

IN THE SUPREME COURT OF THE STATE OF NEVADA

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ALEX B. GHIBAUDO,

Appellant,

v.

TARA KELLOGG,

Respondents.

Electronically Filed  
Aug 10 2021 05:21 p.m.  
Supreme Court No.: 82248  
Elizabeth A. Brown  
Clerk of Supreme Court  
Eighth Judicial District Court  
Case No.: A-17-763560-C

**MOTION TO WITHDRAW AS COUNSEL FOR RESPONDENT/CROSS-  
APPELLANT TARA KELLOGG PURSUANT TO N.R.A.P. 46**

COMES NOW CORY READE DOWS AND SHAFER, and moves for an Order granting this firm permission to withdraw as attorneys of record for Respondent/Cross-Appellant TARA KELLOGG pursuant to N.R.A.P. 46. This Motion is made and based on the papers and pleadings, the Points and Authorities submitted in support hereof, and any oral argument which may be required at the hearing set for this matter.

DATED this 10th day of August, 2021.

CORY READE DOWS AND SHAFER  
By: /s/ R. Christopher Reade  
R. CHRISTOPHER READE, ESQ.  
Nevada Bar No. 006791  
1333 North Buffalo Drive, Suite 210  
Las Vegas, Nevada 89128  
(702) 794-4411  
Withdrawing Counsel for Respondent

## POINTS AND AUTHORITIES

### **I. THIS COURT IS AUTHORIZED TO ALLOW COUNSEL TO WITHDRAW FROM FURTHER REPRESENTATION OF RESPONDENT/CROSS-APPELLANT TARA KELLOGG UPON A BREAKDOWN OF THE ATTORNEY/CLIENT RELATIONSHIP**

This Court is intimately familiar with the proceedings at bar and pending appeal in this matter. This matter evolves out of a 2016 stipulated settlement in a domestic relations matter which resulted in a 2017 Decree of Divorce between Appellant ALEX GHIBAUDO [hereinafter “GHIBAUDO”] and Respondent/Cross-Appellant TARA KELLOGG [hereinafter “KELLOGG”]. The underlying Decree is final. Enforcement proceedings were brought upon the terms of the Decree which continued from 2017 through an evidentiary hearing in September 2020. There is a post-Decree judgment which is presently on appeal to this Court. There are also post-Judgment proceedings pending before the Eighth Judicial District Court.

In Autumn of 2019, Respondent/Cross-Appellant KELLOGG retained Withdrawing Counsel CORY READE DOWS & SHAFER [“Counsel”] for assistance as co-counsel to KELLOGG’s then-counsel regarding certain collection matters before the District Court.<sup>1</sup> The terms of the retention stated that Client KELLOGG could terminate Counsel’s services at any time. The terms of the

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<sup>1</sup> Declaration of Counsel, attached as Exhibit “1”.

retention stated that Counsel could terminate the attorney/client relationship with KELLOGG upon good cause.

Counsel and KELLOGG were able to work together through the prosecution of an Evidentiary Hearing in September 2020. Judgment was entered in favor of KELLOGG as a result of that evidentiary hearing. This appeal arises out of Appellant GHIBAUDO's appeal of the District Court's November 2020 Judgment arising out of that hearing. Respondent/Cross-Appellant KELLOGG has raised meritorious issues in her cross-appeal to this Court. This Motion is not a reflection of the merits of KELLOGG's positions before the District Court or this Court.

Unlike so many withdrawals that arise out of a breakdown in the financial relationship between client and counsel, this is not one of those cases. Counsel has been patient with Client not paying the outstanding accruing balances. However on August 5<sup>th</sup>, 2021, the attorney/client relationship fractured between Counsel and Client KELLOGG and became impossible to continue as there was a breakdown in attorney/client communications regarding tactical and strategic decisions in this appeal in such a manner that it will impair and has impaired the ability for continuing representation in this matter. Counsel has moved before the District Court for withdrawal. Client has retrieved her full file from Counsel on August 6<sup>th</sup>, 2021<sup>2</sup> and is aware due to the pending hearings in the District Court and this Court that new

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2      Receipt of File, attached as Exhibit "2"

counsel is required effective immediately for Client. Appellant has recently received an extension of time for Appellant's Opening Brief with this Court which will allow an extended window for transition. There is no repairing the fracture and divide in this matter.

N.R.A.P. 46(e)(3) governs withdrawal in civil appeals before this Court and allows withdrawal.

**(3) Withdrawal.** A withdrawal of counsel may be effected only by filing a motion in the court. The withdrawing attorney shall serve a copy of the motion on the attorney's client and any adverse party. The motion shall clearly state the reasons for the attorney's withdrawal consistent with SCR 46 and RPC 1.16. A motion that is filed after judgment or final determination as provided in SCR 46 will only be granted if the Supreme Court or Court of Appeals has issued a final decision in the matter and the time for filing a petition for rehearing has expired.

SCR 46 allows either an attorney or a client to request the withdrawal of an attorney as counsel of record from the matter either (1) upon the consent of the attorney and approved by the client; or (2) upon the order of the Court or judge thereof on the application of the attorney or the client. Id. NRPC 1.16 sets for times when termination of the attorney/client relationship is permissible and required.

**Rule 1.16. Declining or Terminating Representation.**

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) The representation will result in violation of the Rules of Professional Conduct or other law;

(2) The lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) The lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) Withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) The client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) The client has used the lawyer's services to perpetrate a crime or fraud;

(4) A client insists upon taking action that the lawyer considers repugnant or with which the lawyer has fundamental disagreement;

(5) The 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;

(6) The representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) Other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

The relationship between KELLOGG and her counsel has so deteriorated that continued representation is not possible. The attorney/client relationship has irreparably frayed to the point that continued representation is not possible under the

circumstances in this matter. This is not withdrawal for financial considerations but is withdrawal due to fundamental disagreements regarding tactical and strategic decisions in this matter which makes continued work impossible pursuant to NRPC 1.16(b)(4). Counsel has worked diligently to defend and prosecute KELLOGG'S interests. KELLOGG has very meritorious grounds for her Response and Cross-Appeal. This withdrawal can be effectuated without adverse consequences to Client KELLOGG who already has her file and has 45 days before a Response Brief would be required at the earliest.

Counsel does not take this withdrawal lightly and wishes KELLOGG and whatever Counsel ultimately represents KELLOGG success on their appeal. This withdrawal in no manner reflects upon the strengths of KELLOGG's case. Counsel and Client have already proceeded with Client retrieving and receiving her file. Client KELLOGG has been apprised of all deadlines in this matter and the need for KELLOGG to find new counsel under the circumstances set forth in this motion. Upon said withdrawal, Respondent/Cross-Appellant TARA KELLOGG may be located by any other party to this litigation at the last known address provided:

TARA KELLOGG  
2050 W. Warm Springs Road #2112  
Henderson, Nevada 89014  
(702) 334-4932  
Tara Kellogg tarakellogg1@gmail.com

## **CONCLUSION**

Based on the foregoing, the law firm of CORY READE DOWS AND SHAFER respectfully requests that this Court grant this Motion to Withdraw as Counsel for Respondent/Cross-Appellant TARA KELLOGG. Should there be a substitution prepared, Counsel will notify this Court and withdraw this Motion.

DATED this 10th day of August, 2021.

CORY READE DOWS AND SHAFER

By: /s/ R. Christopher Reade  
R. CHRISTOPHER READE, ESQ.  
Nevada Bar No. 006791  
1333 North Buffalo Drive, Suite 210  
Las Vegas, Nevada 89128  
(702) 794-4411  
Withdrawing Counsel for Respondent

**EXHIBIT “1”**

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**DECLARATION OF R. CHRISTOPHER READE, ESQ.**

STATE OF NEVADA     }  
COUNTY OF CLARK    }     ss.

R. CHRISTOPHER READE, ESQ., being first duly sworn upon his oath  
deposes and says:

1.     That I am an attorney duly licensed to practice law in the State of Nevada and an attorney with the law firm of CORY READE DOWS AND SHAFER, which served as co-counsel for Respondent/Cross-Appellant TARA KELLOGG in this appeal and is competent to .

2.     That the attorney/client relationship has been irreparably broken in this matter due to a breakdown in communications, strategy and tactics. Declarant would be happy to share such information with the Court in camera if necessary to not violate the attorney/client privilege.

3.     That Client has retrieved all of her file materials from Declarant's firm for purposes of retaining new counsel. Client and Counsel both understand and agree that Client will be obtaining new counsel.

4.     That Client has already filed an adversary proceeding regarding fee dispute as against Counsel which only further has driven a wedge in this matter.

5.     That the relationship between KELLOGG and her counsel has frayed to the point that withdrawal is not merely allowed but necessary due to fundamental

disagreements regarding tactical and strategic decisions in this matter which makes continued work impossible pursuant to NRPC 1.16(b)(4).

6. That KELLOGG has very meritorious grounds for her Response and Cross-Appeal in this matter; this withdrawal does not bear upon the merits of KELLOGG's rights and interests.

7. That this withdrawal can be effectuated without adverse consequences to Client KELLOGG who already has her file and has 45 days before a Response Brief would be required at the earliest.

I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF NEVADA THAT THE FOREGOING IS TRUE AND CORRECT AND THAT THE FOREGOING DECLARATION WAS EXECUTED THIS 10TH DAY OF AUGUST, 2021.

/s/ R. Christopher Reade  
R. CHRISTOPHER READE, ESQ.

### **CERTIFICATE OF SERVICE**

I certify that on the 10<sup>th</sup> day of August, 2021, I electronically filed the foregoing MOTION TO WITHDRAW AS COUNSEL FOR RESPONDENT/CROSS-APPELLANT TARA KELLOGG PURSUANT TO N.R.A.P. 46 with the Clerk of Court for the Supreme Court of Nevada by using the Supreme Court of Nevada's E-filing system.

I further certify that on the above reference date service was made to the following parties by the methods therein indicated.

■ **NEFCR System upon the following All Parties by NEFCR 9 and 13**

	Alex Ghibaudo, Esq. Michancy Cramer, Esq. 197 East California Avenue, #250 Las Vegas, Nevada 89104
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■ **Certified United States mail, postage fully prepaid upon the following Parties or counsel and/or parties to this matter:**

Tara Kellogg 2050 West Warm Springs Road, #2112 Henderson, Nevada 89014	Alex Ghibaudo, Esq. Michancy Cramer, Esq. 197 East California Avenue, #250 Las Vegas, Nevada 89104
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/s/ Elizabeth Arthur

An Employee of CORY READE DOWS & SHAFER

**EXHIBIT "2"**

**EXHIBIT "2"**

Cory Reade Dows & Shafer  
1333 N. Buffalo Drive, Suite, 210  
Las Vegas, Nevada 89128  
(702) 794-4411 Fax (702) 794-4421

1 **ROC**

2 R. CHRISTOPHER READE, ESQ.

3 Nevada Bar No. 006791

4 CORY READE DOWS & SHAFER

5 1333 North Buffalo Drive, Suite 210

6 Las Vegas, Nevada 89128

7 Telephone: (702) 794-4411

8 Facsimile: (702) 794-4421

9 E-Mail: [creade@crdslaw.com](mailto:creade@crdslaw.com)

10 Attorneys for Plaintiff TARA KELLOGG

11 **DISTRICT COURT**

12 **FAMILY DIVISION**

13 **CLARK COUNTY, NEVADA**

14 TARA KELLOGG

15 Plaintiff,

16 vs.

17 ALEX GHIBAUDO

18 Defendant.

Case No.: D-15-522043-D

Dept. No.: H

19 **RECEIPT OF COPY**

20 I, TARA KELLOGG received a total of 13 boxes from CORY READE DOWS &  
21 SHAFER of Pleadings and Documents pertaining to the current litigation, Case No: D-15-  
22 522043-D, Kellogg v. Ghibaud. I, TARA KELLOGG am also in Receipt of Check No. 17356  
23 payable to DONNA KELLOGG in the amount of \$15,000.00 is hereby acknowledged on this  
24 6<sup>th</sup> day of August, 2021

25 By:

26 TARA KELLOGG

27 