

1 **MOT**

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Elizabeth A. Brown
Clerk of Supreme Court

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

11 JAZLEEN GAMBOA,
12 *Appellant,*

No.: 83671

13 v.

14 JOSE GAMBOA,
15 *Respondent.*

**MOTION TO WITHDRAW AS
ATTORNEY FOR APPELLANT**

16 COMES NOW, DAVID L. MANN, ESQ., and respectfully requests this Honorable Court
17 to enter its Order allowing withdrawal as counsel of record for Appellant, JAZLEEN GAMBOA,
18 in the above-captioned Supreme Court matter.

19 The attorney for the Appellant herein is seeking leave of this Honorable Court to
20 withdraw as counsel for said Appellant, JAZLEEN GAMBOA. The facts and circumstances,
21 which gave rise to the filings of this action, are more fully set forth in the Affidavit of DAVID L.
22 MANN, ESQ., attached hereto and made reference herein as though fully set forth

23 This Motion is made and based upon the Affidavit of DAVID L. MANN, ESQ., the
24 Memorandum of Points and Authorities attached hereto, the pleadings and papers on file herein,
25 and upon the arguments of

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counsel, should the Court wish to hear the same.

1 Dated this 9th day of March, 2022

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3 Submitted By: 

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8 **STATEMENT OF FACTS**

9 Attorney, DAVID L. MANN, ESQ., was retained by Appellant, JAZLEEN GAMBOA.
10 Client and attorney have irreconcilable differences in litigation strategies. Attorney, David L.
11 Mann, Esq. respectfully requests that he be allowed to withdraw as the attorney of record for
12 Appellant.

13 **II.**

14 **POINTS, AUTHORITIES, AND ARGUMENT**

15 **A. THE COURT SHOULD GRANT A STAY PENDING APPEAL.**

16 Nevada Rule of Appellate Procedure 46 states, in pertinent part:

17 (3) Withdrawal. The attorney shall file a motion to withdraw with the clerk
18 of the Supreme Court and serve a copy of the motion on the attorney's client and
19 any adverse party. The motion shall clearly state whether counsel was appointed
20 or retained and the reasons for the motion. Unless the motion is filed after
21 judgment or final determination as provided in SCR 46, the motion shall be
22 accompanied by:

23 (A) In a direct appeal from a judgment of conviction in which the
24 defendant is represented by retained counsel, an affidavit or signed statement
25 from the defendant stating that the defendant has discharged retained counsel, the
grounds for that discharge, and whether the defendant qualifies for appointment of
new counsel; or

(B) In a direct appeal from a judgment of conviction in which the
defendant is represented by appointed counsel, an affidavit or signed statement
from the defendant stating that the defendant consents to appointed counsel's
being relieved and requesting appointment of substitute counsel; or

(C) In a post-conviction appeal, a motion by defendant to proceed in
proper person or with substitute counsel retained by defendant.

A motion filed under this Rule that is not accompanied by defendant's affidavit or
signed statement as required under subparagraphs (A) and (B) or a motion to
proceed in proper person as required under subparagraph (C) shall set forth the

1 reasons for the omission. A motion that is filed after judgment or final
2 determination as provided in SCR 46 will only be granted if the Supreme Court
3 has issued a final decision in the matter and the time for filing a petition for
rehearing has expired.

4 Further, Nevada Rule of Professional Conduct 1.16 states that an attorney can withdraw
5 if “(1) The representation will result in violation of the Rules of Professional Conduct or other
6 law,” if the client “insists upon taking action” with which the attorney “has a fundamental
7 disagreement,” if the client “fails substantially to fulfill an obligation to the lawyer regarding the
8 lawyer’s services” and that client has been given notice of impending withdrawal, or if the
9 attorney will suffer “an unreasonable financial burden” if he or she continues to represent the
10 client. Nevada Rule of Appellate Procedure 3E governs fast track custody appeals. Subsection
11 (i) states that an attorney can be subject to sanctions if the rules are not filed.

12 Mr. Mann therefore requests that he be allowed to withdrawal from this appeal pursuant
13 to NRAP 1.16(a)(1), 1.16(b)(4), 1.16(b)(5), and 1.16(b)(6).

14 Nevada Supreme Court Rule 46 states, in relevant part, as follows:

15 **Rule 46.** – **Withdrawal or Change of Attorney.** The attorney in an action or special
16 proceeding may be changed at any time before judgment or final determination as follows:
17

- 18 1. Upon consent of the attorney, approved by the client;
- 19 2. Upon the order of the court or judge thereof on the application of the attorney or the
20 client.

21 Nevada Supreme Court Rule 46 (2020):

22 Nevada Rules of Professional Conduct states in relevant part, as follows:

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

- 25 (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) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a 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 a 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.

Nevada Rules of Professional Conduct, Rule 1.16 (2020).

Rule 7.40 Appearances; substitutions; withdrawal or change of attorney.

1 b) Counsel in any case may be changes only:

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3 2) When no attorney has been retained to replace the attorney withdrawing, by order of
4 the court, granted upon written motion: and

5 i) If the application is made by the attorney, the attorney must include in an
6 affidavit the address, or last known address, at which the client may be serve with notice of
7 further proceedings taken in the case in the event the application for withdrawal is granted, and
8 the telephone number, or last known telephone number at which the client may be reached, and
9 the attorney must serve a copy of the application upon the client and all other parties to the action
10 or their attorneys [.]

9 Appellant has been advised of your affiant's intention to withdraw as counsel from this
10 case on numerous occasions both verbally and in writing. The last known address of Appalment,
11 JAZLEEN GAMBOA, at which place she may be served with further proceedings taken in this
12 action, in the event that this Motion for Withdrawal is granted is,

11 **CONCLUSION**

12 Based upon the Rules cited above, and the reasons more fully set forth in the Affidavit of,
13 attorney David L. Mann, Esq., respectfully requests that this honorable Court enter an order
14 granting him the relief requested herein.
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16 Dated this 9th day of March, 2022

17 Submitted By:



18 DAVID L. MANN, ESQ.

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