

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Mar 18 2016 10:06 a.m.

Tracie K. Lindeman
Clerk of Supreme Court
Nevada Supreme Court
Case No. 69372

REZA ZANDIAN A/K/A GOLAMREZA
ZANDIANJAZI A/K/A GHOLAM REZA
ZANDIAN A/K/A REZA JAZI A/K/A J.
REZA JAZI A/K/A G. REZA JAZI A/K/A
GHONOREZA ZANDIAN JAZI, an
individual,

Appellant,

vs.

JED MARGOLIN, an individual,

Respondent.

**EMERGENCY MOTION RENEWING MOTION TO WITHDRAW
AS COUNSEL FOR APPELLANT REZA ZANDIAN AND
EMERGENCY MOTION SEEKING EXTENSION OF TIME TO
OPPOSE RESPONDENT'S MOTION FOR SANCTIONS**

RELIEF REQUESTED BY MARCH 22, 2016

Severin A. Carlson (“Carlson”), Tara C. Zimmerman (“Zimmerman”) and Kaempfer Crowell (collectively “Counsel”), counsel for Appellant REZA ZANDIAN aka GOLAMREZA ZANDIANJAZI aka GHOLAM REZA ZANDIAN aka REZA JAZI aka J. REZA JAZI aka G. REZA JAZI aka GHONONREZA ZANDIAN JAZI (“Appellant”), pursuant to Supreme Court Rule (“SCR”) 46, Nevada Rule of Professional Conduct (“NRPC”) 1.16, and

Nevada Rule of Appellate Procedure (“NRAP”) 26(b)(1)(A) seek, on an expedited basis, to renew their Motion to Withdraw as Counsel of Record for Appellant and seek an extension of time for Appellant to oppose Respondent’s Motion for Sanctions. **Relief from this Court is requested on or before March 22, 2016, in light of the fact that a response to Respondent’s Motion for Sanctions is due on March 24, 2016.** This motion is being made on an emergency basis to obtain a decision of this Court in a timely fashion and to afford Appellant sufficient opportunity to retain new counsel and/or to oppose Respondent’s Motion for Sanctions filed on March 11, 2016 (the “Motion for Sanctions”). Counsel requests that Appellant be granted thirty (30) additional days to respond to the Motion for Sanctions.

These requests are being brought together in this single pleading as the underlying procedural history, facts and applicable law are interrelated. This Motion is made based upon the following Points and Authorities and the Affidavit of Severin A. Carlson, attached hereto as **Exhibit 1**.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL BACKGROUND

Kaempfer Crowell entered an appearance in the First Judicial District Court on behalf of Appellant on or about March 3, 2014, to, among other

things, seek to set aside orders of the District Court that had been entered against Appellant, directly and via appeals to this Court.

The District Court, in its November 6, 2015 Order Granting Plaintiff's Motion for Debtor Examination and to Produce Documents (the "November 6 Order"), ordered Appellant to produce to counsel for Respondent JED MARGOLIN ("Respondent"), on or before December 21, 2015, various information and documents as set forth in the November 6 Order. The November 6 Order also directed Appellant to appear for a judgment debtor examination at a location to be specified by Respondent's counsel in San Diego, California in February 2016.

Thereafter, Carlson advised Appellant that Counsel would be seeking to withdraw in the District Court proceedings unless Appellant's obligations were fulfilled. At that time, Appellant advised Carlson that he wished to pursue an appeal of the November 6 Order. Given the approaching deadline for filing an appeal, Carlson agreed to file the Notice of Appeal and Case Appeal Statement with the First Judicial District Court on Appellant's behalf, solely for the purpose of preserving Appellant's appeal. Carlson advised Appellant that Counsel would be seeking to withdraw in both the District Court and Nevada Supreme Court proceedings immediately thereafter.

Counsel filed a Motion to Withdraw as Counsel in the District Court proceedings on December 10, 2015 (the “DC Motion to Withdraw”), the same day the Notice of Appeal was filed. Respondent filed an Opposition to the DC Motion to Withdraw as Counsel on December 28, 2015. The appeal was docketed with this Court on December 15, 2015. On December 16, 2015, Counsel filed its Motion to Withdraw as Counsel with this Court (the “SC Motion to Withdraw”). On December 18, 2015, Respondent filed a Notice of Non-Opposition to the SC Motion to Withdraw. Appellant’s Docketing Statement was filed with this Court on December 23, 2015. On December 31, 2015, the District Court entered an order granting the DC Motion to Withdraw, over Respondent’s opposition to the DC Motion to Withdraw.

Thereafter, on January 7, 2016, this Court entered an Order to Show Cause why Appellant’s appeal should not be dismissed. In its Order to Show Cause, this Court deferred ruling on the SC Motion to Withdraw pending resolution of the underlying jurisdictional question. Appellant’s Response to the Order to Show Cause was filed on February 2, 2016 and Respondent’s Reply to Appellant’s Response was filed on February 17, 2016. On March 4, 2016, this Court entered its Order Dismissing Appeal, which order also denied, as moot, the SC Motion to Withdraw.

Pursuant to NRAP 41(a)(1) this Court's remittitur shall issue 25 days after the entry of judgment unless the time is shortened or enlarged by order. Time for issuance of this Court's remittitur has not been shortened or enlarged by order and is therefore due to issue on March 29, 2016. Jurisdiction in an appeal is vested solely in this Court until the remittitur issues to the District Court (*see Buffington v. State*, 110 Nev. 124 (1994)), although while an appeal is pending and prior to issuance of the remittitur, the District Court retains jurisdiction to address "matters that in no way affect the appeal's merits". *See Mack-Manley v. Manley*, 122 Nev. 849, 855 (2006). The District Court's December 31 order granting the DC Motion to Withdraw is a matter that in no way affects the appeal's merits. Although the District Court has granted the DC Motion to Withdraw, because remittitur has not yet issued, this Court still retains jurisdiction and it is unclear whether Counsel's representation of Appellant ceased at the time this Court entered its Order Dismissing Appeal.

Further complicating the matter, on March 11, 2016, Respondent filed a Motion for Sanctions against Appellant. The certificate of service for the Motion for Sanctions indicates that it was served on Counsel via the Court's electronic notification system. The certificate also indicates that the Motion for Sanctions was served on Appellant via first-class mail, having been

deposited on March 10, 2016, the day before the Motion for Sanctions was file stamped by this Court. Pursuant to NRAP 27(a)(3)(A), a response to the motion must be filed within seven (7) days after service of the motion. Pursuant to NRAP 26(c), three (3) calendar days are added to the prescribed period. Based upon NRAP 26(a) and the service date of March 10, 2016, Appellant must respond to the Motion by no later than March 24, 2016, or possibly March 25, 2016 if the electronic notification system date is the start date for the seven (7) day period.

Counsel has conferred with the State Bar Counsel's Office and based on recommendations of the State Bar Counsel's Office and Counsel's own research and analysis, now seeks to renew its SC Motion to Withdraw and also seeks to preserve the Appellant's opportunity to oppose Respondent's Motion for Sanctions by seeking an additional thirty (30) days for Appellant to respond to the Motion for Sanctions either on a pro se basis or after retaining new Nevada counsel.

During Counsel's representation, Appellant has substantially failed to fulfill his obligations to Counsel regarding their services, despite Appellant having been given reasonable warning that Counsel would withdraw unless the obligations were fulfilled. Further representation would result in an unreasonable financial burden on Counsel. The representation has also

been rendered unreasonably difficult as a result of Appellant's failure to meet his obligations to Counsel.

Furthermore, Appellant insists upon taking action that Counsel considers repugnant or with which Counsel has fundamental disagreement, therefore making the immediate request to withdraw reasonable.

II. ANALYSIS

Rule 1.16(b)(5) of the Nevada Rules of Professional Conduct provides that an attorney may withdraw from representing a client if "[t]he client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given a reasonable warning that the lawyer will withdraw unless the obligation is fulfilled."

Rule 1.16(b)(4) of the Nevada Rules of Professional Conduct provides that an attorney may withdraw from representing a client if "[a] client insists upon taking action that the lawyer considers to be repugnant or with which the lawyer has a fundamental disagreement." Furthermore, SCR 46 provides:

The attorney in an action or special proceeding may be changed at any time before judgment or final determination as follows:

- (2) Upon the order of the court or judge thereof on the application of the attorney or the client.

In this case, Appellant has not only substantially failed to fulfill his

obligations to Counsel regarding their services, but also insists upon taking action that Counsel considers to be repugnant or with which Counsel has a fundamental disagreement. Consequently, Counsel hereby requests that the Court issue an order allowing withdrawal as Appellant's counsel.

As set forth in the attached Affidavit of Severin A. Carlson, and based upon information and belief, the last known addresses of Appellant are as follows:

Gholam Reza Zandian Jazi
6 rue Edouard Fournier
75116 Paris
France

Reza Zandian
c/o Alborz Zandian
9 MacArthur Place, Unit 2105
Santa Ana, California 92707-6753

rezazand@hotmail.com

This Motion will be served upon Appellant. No judgment or final determination has been filed in this case other than those previously ordered by the District Court and upheld by this Court.

Counsel has complied with all requirements to withdraw as counsel of record. As such, an order allowing Counsel to withdraw is appropriate. Appellant has been provided a copy of the District Court's November 6 Order, after having been informed of the District Court's ruling from the

bench, and therefore is readily aware of the deadlines and requirements set forth in the November 6 Order. Appellant has also been provided with a copy of this Court's Order Dismissing Appeal, as well as Respondent's Motion for Sanctions and has been advised of the deadline associated with the Motion for Sanctions.

NRAP 26(b)(1)(A) provides that for good cause, this Court may extend the time prescribed by the Nevada Rules of Appellate Procedure. Here, good cause has been shown based upon the unclear status of Counsel's representation of the Appellant before this Court, despite the District Court having granted Counsel's DC Motion to Withdraw on December 31, 2015. The request for an additional thirty (30) days for Appellant to respond to the Motion for Sanctions is reasonable in that it allows for Appellant to respond as a pro se litigant or to obtain new Nevada counsel. The period of time is also not so long as to cause unreasonable delay of these proceedings.

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III. CONCLUSION

For the reasons stated above, Counsel request an order of this Court allowing them to withdraw as counsel of record for Appellant in this action and to grant Appellant thirty (30) additional days to respond to the Motion for Sanctions.

DATED this 18th day of March, 2016.

KAEMPFER CROWELL

BY: 

SEVERIN A. CARLSON
Nevada Bar No. 9373
TARA C. ZIMMERMAN
Nevada Bar No. 12146
510 West Fourth Street
Carson City, Nevada 89703
Attorneys for Appellant

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(d), I, the undersigned, hereby certify that on the 18th day of March, 2016, I caused the foregoing **EMERGENCY MOTION RENEWING MOTION TO WITHDRAW AS COUNSEL FOR APPELLANT REZA ZANDIAN AND EMERGENCY MOTION SEEKING EXTENSION OF TIME TO OPPOSE RESPONDENT'S MOTION FOR SANCTIONS** to be served this date by depositing a true copy of the same for mailing at Reno, Nevada, first class postage fully prepaid and addressed to:

Reza Zandian
c/o Alborz Zandian
9 MacArthur Place, Unit 2105
Santa Ana, California 92707-6753
Appellant

Gholam Reza Zandian Jazi
6 rue Edouard Fournier
75116 Paris
France
Appellant

I also caused the foregoing Motion to be served by hand delivery as follows:

Matthew D. Francis, Esq.
Adam P. McMillen, Esq.
Brownstein Hyatt Farber Schreck, LLP
5371 Kietzke Lane
Reno, Nevada 89511
Attorneys for Respondent

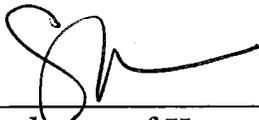
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I also caused the foregoing Motion to be served this date by e-mail as follows:

rezazand@hotmail.com

amcmillen@bhfs.com



an employee of Kaempfer Crowell

EXHIBIT INDEX
Case No. 69372

Exhibit No.	Description	No. of Pages
1	AFFIDAVIT OF SEVERIN A. CARLSON IN SUPPORT OF EMERGENCY MOTION RENEWING MOTION TO WITHDRAW AS COUNSEL FOR APPELLANT REZA ZANDIAN AND EMERGENCY MOTION SEEKING EXTENSION OF TIME TO OPPOSE RESPONDENT'S MOTION FOR SANCTIONS	10

EXHIBIT 1

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AS COUNSEL FOR APPELLANT REZA ZANDIAN AND
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RELIEF REQUESTED BY MARCH 22, 2016

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

1. I am duly licensed to practice law in the State of Nevada and am a partner at the law firm of Kaempfer Crowell, as well as counsel for Appellant REZA ZANDIAN ("Appellant") in the above-entitled matter.

2. I have personal knowledge of the facts stated herein, except for those stated upon information and belief and, as to those, I believe them to be true.

3. I make this Affidavit in support of the Emergency Motion Renewing Motion to Withdraw as Counsel for Appellant Reza Zandian and Emergency Motion Seeking Extension of Time to Oppose Respondent's Motion for Sanctions.

4. Kaempfer Crowell entered an appearance in the First Judicial District Court on behalf of Appellant on or about March 3, 2014, to, among other things, seek to set aside orders of the District Court that had been entered against Appellant, directly and via appeals to this Court.

5. The District Court, in its November 6, 2015 Order Granting Plaintiff's Motion for Debtor Examination and to Produce Documents (the "November 6 Order"), ordered Appellant to produce to counsel for Respondent JED MARGOLIN ("Respondent"), on or before December 21, 2015, various information and documents as set forth in the November 6 Order. The November 6 Order also directed Appellant to appear for a judgment debtor examination at a location to be specified by Respondent's counsel in San Diego, California in February 2016.

6. Thereafter, I advised Appellant that I would be seeking to withdraw in the District Court proceedings unless Appellant's obligations were fulfilled. At that time, Appellant advised me that he wished to pursue an appeal of the November 6 Order. Given the approaching deadline for filing an appeal, I agreed to file the Notice of Appeal and Case Appeal Statement with the First Judicial District Court on Appellant's behalf, solely for the purpose of preserving Appellant's appeal. I advised Appellant that Counsel would be seeking to withdraw in both the District Court and Nevada Supreme Court proceedings immediately thereafter.

7. I filed a Motion to Withdraw as Counsel in the District Court proceedings on December 10, 2015 (the "DC Motion to Withdraw"), the same day the Notice of Appeal was filed. Respondent filed an Opposition to the DC Motion to Withdraw on December 28, 2015. The appeal was docketed with this Court on December 15, 2015. On December 16, 2015, I filed a Motion to Withdraw as Counsel with this Court (the "SC Motion to Withdraw"). On December 18, 2015, Respondent filed a Notice of Non-Opposition to the SC Motion to Withdraw.

8. Appellant's Docketing Statement was filed with this Court on December 23, 2015.

9. On December 31, 2015, the District Court entered an order granting the DC Motion to Withdraw, over Respondent's opposition to the DC Motion to Withdraw.

10. On January 7, 2016, this Court entered an Order to Show Cause why Appellant's appeal should not be dismissed. In its Order to Show Cause, this Court deferred ruling on the SC Motion to Withdraw, pending resolution of the underlying jurisdictional question.

11. Appellant's Response to the Order to Show Cause was filed on February 2, 2016 and Respondent's Reply to Appellant's Response was filed on February 17, 2016.

12. On March 4, 2016, this Court entered its Order Dismissing Appeal, which order also denied, as moot, the SC Motion to Withdraw.

13. Pursuant to NRAP 41(a)(1) this Court's remittitur shall issue 25 days after the entry of judgment unless the time is shortened or enlarged by order. Time for issuance of this Court's remittitur has not been shortened or enlarged by order and is therefore due to issue on March 29, 2016.

14. Although the District Court has granted the DC Motion to Withdraw, because remittitur has not yet issued, this Court still retains jurisdiction and it is unclear whether Counsel's representation of Appellant ceased at the time this Court entered its Order Dismissing Appeal.

15. Further complicating the matter, on March 11, 2016, Respondent filed a Motion for Sanctions against Appellant. The certificate of service for the motion indicates that it was served on Counsel via the Court's electronic notification system. The certificate also indicates that the motion was served on Appellant via first-class mail, having been deposited on March 10, 2016, the day before the motion was file stamped by this Court. Pursuant to NRAP 27(a)(3)(A), a response to the motion must be filed within seven (7) days after service of the motion. Pursuant to NRAP 26(c), three (3) calendar days are added to the prescribed period. Based upon NRAP 26(a) and the service date of March 10, 2016, Appellant must respond to the motion by no later than March 24, 2016, or possibly March 25, 2016 if the electronic notification system date is the start date for the seven (7) day period.

16. Although I received electronic notice of the Motion for Sanctions on March 11, 2016, a Friday, I did not have an opportunity to review the substance of the motion or consider the status of Counsel's responsibilities to Appellant until late this week. Specifically, I had to travel to Tonopah, Nevada on Sunday, March 13, 2016 to defend depositions in another matter on Monday, March 14, 2016, returning home late in the

evening on March 14. On Tuesday, March 15, 2016, I had to prepare for an afternoon hearing that day in yet another case.

17. On Wednesday, March 15, 2016, I conferred with the State Bar Counsel's Office regarding the underlying circumstances and based on recommendations of the State Bar Counsel's Office and my own research and analysis, now seek to renew the SC Motion to Withdraw and also seek a thirty (30) day extension of time for Appellant to oppose the Motion for Sanctions.

18. In the later afternoon of Wednesday, March 15, 2016, I left a voicemail message for Respondent's counsel seeking a stipulation to extend Appellant's time to respond to the Motion for Sanctions.

19. On the morning of Thursday, March 16, 2016, Respondent's counsel responded indicating that he would grant the requested extension only if certain conditions were met. In my judgment, meeting those conditions would have required me to violate my ethical duties to a client and/or a former client and therefore no stipulation to extend Appellant's time to oppose the Motion for Sanctions has been reached, necessitating the immediate emergency request.

20. I have notified Appellant, via email, on numerous occasions of the Motion for Sanctions, the deadline to oppose the same, as well as my

efforts to obtain an extension of time, as well as continuing to advise Appellant of the fact that the District Court has long since granted the DC Motion to Withdraw and that the status of my representation before this Court is in question. Appellant has responded to my emails, so he is aware of the circumstances and my position as his counsel and/or former counsel before the District Court and this Court.

21. Continued representation of Appellant will result in an unreasonable financial burden on Kaempfer Crowell and the representation has been rendered unreasonably difficult.

22. Appellant has been repeatedly reminded of his obligations to Kaempfer Crowell and that failure to meet those obligations could result in Kaempfer Crowell withdrawing as counsel of record.

23. Appellant continues to have substantial outstanding obligations to Kaempfer Crowell that remain unrectified.

24. Despite repeated attempts to counsel Appellant, Appellant insists upon taking action that Kaempfer Crowell and I consider to be repugnant or with which we have a fundamental disagreement.

25. Appellant's current mailing address on file with this office, as well as all other known possible addresses are:

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Gholam Reza Zandian Jazi
6 rue Edouard Fournier
75116 Paris
France

Reza Zandian
c/o Alborz Zandian
9 MacArthur Place, Unit 2105
Santa Ana, California 92707-6753

rezazand@hotmail.com

26. That in light of the above, I believe an order allowing Kaempfer Crowell to withdraw from representation in this matter is appropriate and that such withdrawal complies with the applicable rules of professional conduct, Nevada Supreme Court Rules, and Nevada Rules of Appellate Procedure.

27. That in light of the above, I believe an order granting Appellant an additional thirty (30) days to oppose the Motion for Sanctions is reasonable and does not cause an undue burden on Respondent, nor does it cause an unreasonable delay.

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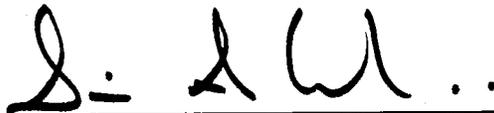
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28. The immediate motion and this Affidavit are being hand-delivered and emailed to Respondent's counsel concurrently with being filed with this Court.

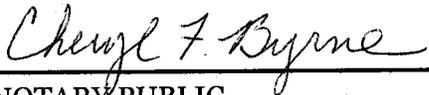
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 18th day of March, 2016.



SEVERIN A. CARLSON

Subscribed and Sworn to before me
this 18th day of March, 2016, by
Severin A. Carlson.



NOTARY PUBLIC

My Commission Expires: *March 29, 2017*

