

## RULE 46. ATTORNEYS

### **(a) Practice Before Supreme Court or Court of Appeals—Bar Membership Required; Exceptions.**

**(1) Bar Membership Required.** To represent a party before the Supreme Court or Court of Appeals, an attorney must be an active member of the State Bar of Nevada except as provided by SCR 42, 43, 49.1, 49.3, or 49.5 and subject to NRAP 46(a)(3).

**(2) Appearance of Counsel.** An attorney must appear in a case for that attorney to file documents in that case. Signing a notice of appeal or original petition or being listed as counsel for a party on the notice of appeal, original petition, or in the case appeal statement filed pursuant to Rule 3(f) will be treated as a notice of appearance for that attorney. Otherwise, counsel for each party must file a formal written notice of appearance as counsel of record on appeal within 14 days after service of the notice of appeal. An attorney who will participate in oral argument of a case must have filed a written notice of appearance with the clerk of the Supreme Court no later than 7 days before the date set for oral argument.

**(3) Foreign Counsel.** If foreign counsel has been granted permission to appear under SCR 42 upon a motion in district court, that attorney must file a copy of the district court's order with the clerk of the Supreme Court. If foreign counsel appears before the Supreme Court or Court of Appeals in the first instance, that attorney must file a motion in the Supreme Court or Court of Appeals as provided by SCR 42. If foreign counsel is associated on the briefs or any other documents submitted for filing, all such briefs and documents must be signed by Nevada counsel, who will be responsible to the court for the content. If foreign counsel is associated upon oral argument, Nevada counsel

must be present during oral argument and will be responsible to the court for all matters presented.

**(b) Reserved.**

**(c) Appointment of Counsel—Indigent Criminal, Habeas Corpus Cases.** In original proceedings before the court, only the court may appoint counsel or remand for the appointment of counsel to represent indigent criminal defendants and indigent habeas corpus petitioners.

**(d) Withdrawal, Substitution, or Discharge of Attorney in Criminal Cases.** The withdrawal, substitution, or discharge of an attorney in criminal cases pending before the Supreme Court or Court of Appeals is governed by this Rule.

**(1) In General.** After the filing of a notice of appeal or petition, any stipulation or motion that effects a change in the representation of a party to the appeal or petition must be filed with the clerk of the Supreme Court.

**(2) Substitution.** A substitution or change of counsel may be effected by serving and filing a substitution in the Supreme Court or Court of Appeals, signed by the affected attorneys and the client or, in lieu of the client's signature, an affidavit or declaration of counsel stating that the client has been informed of and consents to the substitution. The Supreme Court or Court of Appeals may disapprove a nonconforming substitution.

**(3) Withdrawal.**

(A) An attorney who has been incorrectly added as counsel for a respondent or real party in interest upon docketing of the case can seek withdrawal from the case by filing and serving upon the appellant or petitioner a notice, within 14 days of docketing of the case, stating the attorney does not represent the respondent or real party in interest. If known, the notice must state the current address for the respondent or real party in interest. Within

14 days of service of such a notice, the appellant or petitioner must serve the respondent or real party in interest with a copy of the notice of appeal or petition and file proof of such service with the court. If no such notice is filed within 14 days of docketing of the case, withdrawal from the case may only be sought as set forth in Rule 46(d)(3)(B) and (C).

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

(i) in a direct appeal from a judgment of conviction in which the defendant is represented by retained counsel, an affidavit or signed statement 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

(ii) 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

(iii) in a postconviction appeal, an affidavit or signed statement from the defendant stating that the defendant wants to proceed without counsel or with substitute counsel retained by defendant.

(C) A motion filed under this Rule that is not accompanied by defendant's affidavit or signed statement must set forth the reasons for the omission. 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.

**(4) Death or Suspension.** Any party to a criminal appeal may notify the Supreme Court or Court of Appeals in writing when an attorney representing a party dies, or is removed or suspended, or ceases to act as an attorney.

**(e) Withdrawal, Substitution, or Discharge of Attorney in Civil Cases.** The withdrawal, substitution, or discharge of an attorney in a civil case pending before the Supreme Court or Court of Appeals is governed by this Rule.

**(1) In General.** After the filing of a notice of appeal or petition, any stipulation or motion that effects a change in the representation of a party to the appeal or petition must be filed with the clerk of the Supreme Court.

**(2) Substitution.** A substitution or change of counsel may be effected by serving and filing a substitution with the clerk of the Supreme Court, signed by the client, the withdrawing attorney, and the substituted attorney. The Supreme Court or Court of Appeals may disapprove a nonconforming substitution.

**(3) Withdrawal.**

(A) An attorney who has been incorrectly added as counsel for a respondent or real party in interest upon docketing of the case can seek withdrawal from the case by filing and serving upon the appellant or petitioner a notice, within 14 days of docketing of the case, stating the attorney does not represent the respondent or real party in interest. If known, the notice must state the current address for the respondent or real party in interest. Within 14 days of service of such a notice, the appellant or petitioner must serve the respondent or real party in interest with a copy of the notice of appeal or

petition and file proof of such service with the court. If no such notice is filed within 14 days of docketing of the case, withdrawal from the case may only be sought as set forth in Rule 46(e)(3)(B).

(B) The withdrawing attorney must file a motion and serve a copy of the motion on the attorney's client and any adverse party. The motion must 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.

**(4) Suspension.** When an attorney is suspended or ceases to act as an attorney, the attorney must notify the clerk of the Supreme Court in writing and serve a copy of the notice on the attorney's client and any adverse parties. The notice must identify the name and address of any new counsel retained by the client or the current address for the client if no new counsel has been retained.

**(5) Death.** When an attorney dies, the attorney's client must promptly notify the clerk of the Supreme Court in writing and serve a copy of the notice on any adverse parties. The notice must state that the client has retained new counsel or that the client will proceed without counsel if such is permitted under Rule 46A.

### **REVIEWING NOTE**

Additions were made to subdivision (a)(2) to clarify that an attorney must first have appeared in a case before they can file a document in that case and to expand the kinds of documents that will be treated as a notice of appearance. Subdivisions (d)(3) and (e)(3) were also added to allow an attorney

who was incorrectly added to the case for a respondent or real party in interest upon docketing to seek withdrawal by filing a notice.