

1 Laurel E. Davis (NV Bar No. 3005)
 FENNEMORE CRAIG, P.C.
 2 300 South Fourth Street, Suite 1400
 Las Vegas, Nevada 89101
 3 Telephone: (702) 692-8000
 Fax: (702) 692-8064
 4 Email: ldavis@fclaw.com

5 Pro Bono Counsel for Nicholas Serino,
 Legal Aid Center of Southern Nevada
 6
 7

8 UNITED STATES DISTRICT COURT
 9 FOR THE DISTRICT OF NEVADA

10 In re:

11 ROBERT J. FLORISI, and
 ANGELE FLORISI,

12 Debtor(s).

13
 14 NICHOLAS SERINO,

15 Appellant,

16 vs.

17 ROBERT J. FLORISI and
 ANGELE FLORISI,

18 Appellees.
 19

Chapter 7

Case No. BK-S-05-18091-BAM
 Adversary No. 05-1251-BAM
 Adversary No. 06-1076-BAM

APPEAL NUMBER 10-15

**District Court Case Number:
 2:10-CV-0080-JCM-LRL**

**MOTION TO WITHDRAW AS
 COUNSEL OF RECORD AND TO
 EXPAND BRIEFING SCHEDULE**

20 Laurel E. Davis of Fennemore Craig, P.C., moves to withdraw as counsel for Nicholas
 21 Serino, and to expand the briefing schedule to accommodate Mr. Serino. This Motion is made
 22 and based upon the points and authorities set forth below, the accompanying Declaration of
 23 Laurel E. Davis ("Davis Declaration"), the papers and pleadings on file herein and any evidence
 24 adduced at the time of any hearing of this matter.
 25
 26

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **STATEMENT OF FACTS**

4 1. An Application for Order to Show Cause Why Nicholas Serino, aka Richard
5 Serino, Should not be Held in Contempt of this Court's October 5, 2006 and January 16, 2008
6 Orders Pursuant to Fed.R.Bankr. 9020, was filed December 19, 2008 ("OSC Application") in the
7 Bankruptcy Court as Docket No. 127. Davis Declaration, ¶ 1.

8 2. At that time, Nicholas Serino was not represented by counsel. Davis Declaration,
9 ¶ 2.

10 3. In January of 2009, Mr. Serino sought representation through the Legal Aid Center
11 of Southern Nevada. Davis Declaration, ¶ 3.

12 4. On January 27, 2010, Laurel E. Davis prepared and filed a Notice of Appearance
13 as Pro Bono counsel through the Legal Aid Center of Southern Nevada, with respect to the OSC
14 Application. Davis Declaration, ¶ 4.

15 5. Evidentiary hearings on the OSC Application were held April 27, 2009 (DE 172,
16 Serino Testimony; DE 185, Rest); May 22, 2009 (DE 176, Vol. I; DE 177, Vol II); June 1, 2009
17 (DE 182, Vol. I; DE 183, Vol. II); and June 22, 2009 (DE 184). Davis Declaration, ¶ 5.

18 6. After the evidentiary hearings, the Court took the OSC Application under
19 submission. Davis Declaration, ¶ 6.

20 7. On April 13, 2010, the Court rendered its Opinion regarding the OSC Hearings,
21 (DE 196), which required a further declaration from counsel for Florisi to fix the award of
22 attorneys' fees and costs. Davis Declaration, ¶ 7.

23 8. On May 13, 2010, the Court entered its Order Granting Compensatory Damages,
24 Attorneys' Fees and Costs (DE 199), which resolved the OSC Application. Davis Declaration, ¶
25 8.

26 9. Mr. Serino contacted Fennemore Craig, expressing a strong desire to appeal the

1 Court's Order. Davis Declaration, ¶ 9.

2 10. Because of the very short time frame involved in perfecting an appeal in the
3 Bankruptcy Court, and in order to protect Mr. Serino's rights, Ms. Davis filed the Notice of
4 Appeal, Statement of Issues on Appeal and Designation of Record on Appeal. Davis Declaration,
5 ¶ 10.

6 11. For several months, Ms. Davis has assisted Mr. Serino with his efforts to locate
7 new pro bono counsel. At the present time, new counsel has not been located and no one has
8 contacted Ms. Davis advising her that they will take on the case. Davis Declaration, ¶ 11.

9 12. Because Mr. Serino has limited funds, is 97 years old, disabled and wheelchair
10 bound, he did not want the appeal heard by the out of state Bankruptcy Appellate Panel. He
11 therefore objected to the automatic reference of the appeal to the Bankruptcy Appellate Panel to
12 ensure that the matter would be heard in Las Vegas. Davis Declaration, ¶ 12.

13 13. Mr. Serino has been provided with copies of the Notice of Appeal, Designation of
14 Record on Appeal, Statement of Issues on Appeal, all pleadings filed to date in the appeal, all
15 relevant minute entries from the Bankruptcy Court, the file materials and the record on appeal.
16 At the present time, there are no pending deadlines for briefs, pleadings or other responses by him
17 in this matter. Davis Declaration, ¶ 13.

18 14. Because of Mr. Serino's advanced age, health and other concerns, additional time
19 is requested for briefs required from Mr. Serino, because it not likely that he will succeed in
20 locating other pro bono counsel for the appeal. Davis Declaration, ¶ 14.

21 15. Ms. Davis and Fennemore Craig are active participants in and supporters of the
22 Legal Aid Center of Southern Nevada. The scope of the OSC Application expanded significantly
23 when the Bankruptcy Court scheduled it for four days of evidentiary hearings, and it resulted in a
24 very large pro bono commitment on behalf of Mr. Serino. Through the conclusion of the post-
25 hearing briefing, Fennemore Craig provided over 400 hours of pro bono time to Mr. Serino, 250
26 hours of which consisted of time billed by Ms. Davis. Continued representation of Mr. Serino in

1 this appeal is beyond the scope of the initial engagement as pro bono counsel for Mr. Serino, and
2 it would result in a hardship to Fennemore Craig. Davis Declaration, ¶ 15.

3 16. On June 8, 2010, Appellees filed a Motion to Disqualify the Honorable James C.
4 Mahan (Dkt. 3), and that Motion remains pending.

5 17. On June 14, 2010, the Bankruptcy Court transmitted the Appeal Documents to the
6 District Court (Dkt. 223). A copy of the Certificate is attached as Exhibit 1. A briefing schedule
7 has not been issued by this Court.

8 18. On June 15, 2010, the Bankruptcy Court granted the Motion to Withdraw as
9 Counsel of Record for Nicholas Serino, by Order entered June 29, 2010 (Dkt. 226). A copy of
10 the Bankruptcy Court's Order is attached as Exhibit 2.

11 19. Mr. Serino does not object to the withdrawal of Ms. Davis and Fennemore Craig at
12 this time. Davis Declaration, ¶ 16.

13 20. Mr. Serino's address is: 3941 Odin Circle, Las Vegas, NV 89103. Davis
14 Declaration, ¶ 17.

15 III.

16 DECLARATION OF LAUREL E. DAVIS

17 I, Laurel E. Davis, under penalty of perjury, declare as follows:

18 1. I am Pro Bono counsel for Nicholas Serino with respect to the Application for
19 Order to Show Cause Why Nicholas Serino, aka Richard Serino, Should not be Held in Contempt
20 of this Court's October 5, 2006 and January 16, 2008 Orders Pursuant to Fed.R.Bankr. 9020, that
21 was filed with the Bankruptcy Court on December 19, 2008 as Docket No. 127 ("OSC
22 Application"). I am over the age of 18, and I am mentally competent. This declaration is made
23 and based upon my personal knowledge, and if called upon to testify, I could and would do so. I
24 make this declaration in support of my Motion to Withdraw as Counsel of Record for Nicholas
25 Serino and to Expand Briefing Schedule ("Motion").

26 2. At the time the OSC Application was filed, Mr. Serino was not represented by

1 counsel.

2 3. In January of 2009, Mr. Serino sought representation through the Legal Aid Center
3 of Southern Nevada.

4 4. On January 27, 2010, I prepared and filed a Notice of Appearance as Pro Bono
5 counsel through the Legal Aid Center of Southern Nevada, with respect to the OSC Application.

6 5. Evidentiary hearings on the OSC Application were held April 27, 2009 (DE 172,
7 Serino Testimony; DE 185, Rest); May 22, 2009 (DE 176, Vol. I; DE 177, Vol II); June 1, 2009
8 (DE 182, Vol. I; DE 183, Vol. II); and June 22, 2009 (DE 184).

9 6. After the evidentiary hearings, the Court took the OSC Application under
10 submission.

11 7. On April 13, 2010, the Court rendered its Opinion regarding the OSC Hearings,
12 DE 196, which required a further declaration from counsel for Florisi to fix the award of
13 attorneys' fees and costs.

14 8. On May 13, 2010, the Court entered its Order Granting Compensatory Damages,
15 Attorneys' Fees and Costs, DE 199, which resolved the OSC Application.

16 9. Since April 23, 2010, Mr. Serino has made extensive efforts to communicate to me
17 his desire to appeal the Court's Order and Judgment, including telephone calls, correspondence
18 and visits to my office.

19 10. Because of the very short time frame involved in perfecting an appeal in the
20 Bankruptcy Court, and in order to protect Mr. Serino's rights, Ms. Davis filed the Notice of
21 Appeal, Statement of Issues on Appeal and Designation of Record on Appeal.

22 11. For several months, I have assisted Mr. Serino with his efforts to locate new pro
23 bono counsel. At the present time, new counsel has not been located and no one has contacted
24 me to advise that they will take on the case.

25 12. Because Mr. Serino has limited funds, is 97 years old, disabled and wheelchair
26 bound, he did not want the appeal heard by the out of state Bankruptcy Appellate Panel. He

1 therefore objected to the automatic reference of the appeal to the Bankruptcy Appellate Panel to
2 ensure that the matter would be heard in Las Vegas.

3 13. Mr. Serino has been provided with copies of the Notice of Appeal, Designation of
4 Record on Appeal, Statement of Issues on Appeal, all pleadings filed to date in the appeal, all
5 relevant minute entries from the Bankruptcy Court, the file materials and the record on appeal.
6 At the present time, there are no pending deadlines for briefs, pleadings or other responses by him
7 in this matter.

8 14. Because of Mr. Serino's advanced age, health and other concerns, additional time
9 is requested for briefs required from Mr. Serino, because it not likely that he will succeed in
10 locating other pro bono counsel for the appeal.

11 15. Fennemore Craig and I are active participants in and supporters of the Legal Aid
12 Center of Southern Nevada. The scope of this matter expanded significantly when the
13 Bankruptcy Court scheduled it for four days of evidentiary hearings, and it resulted in a very large
14 pro bono commitment on behalf of Mr. Serino. Through the conclusion of the post-hearing
15 briefing, Fennemore Craig provided over 400 hours of pro bono time to Mr. Serino, 250 hours of
16 which consist of time billed by me. Continued representation of Mr. Serino in this appeal is
17 beyond the scope of the initial engagement as pro bono counsel for Mr. Serino, and it would
18 result in a hardship to Fennemore Craig.

19 16. Mr. Serino does not object to the withdrawal of Ms. Davis and Fennemore Craig at
20 this time.

21 17. Mr. Serino's address is: 3941 Odin Circle, Las Vegas, NV 89103.

22 ///

23 ///

24 ///

25 ///

26 ///

1 I declare under penalty of perjury under the laws of the United States that the foregoing is
2 true and correct.

3 Dated: July 8, 2010.

4 /s/ Laurel E. Davis
5 LAUREL E. DAVIS

6
7 **IV.**
8 **LEGAL ARGUMENT**

9 Local Rule 10-6 provides that “No attorney may withdraw after appearing in a case except
10 by leave of court, after notice served on the affected client and opposing counsel.” Additionally,
11 LR IA 10-7(a) states, in pertinent part, “[a]n attorney admitted to practice pursuant to any of these
12 rules shall adhere to the standards of conduct prescribed by the Model Rules of Professional
13 Conduct as adopted and amended from time to time by the Supreme Court of Nevada, except as
14 such may be modified by this Court.”

15 Nevada Rules of Professional Conduct Rule 1.16 states, in pertinent part, as follows:

16 (b) Except as stated in paragraph (c), a lawyer may withdraw from
17 the representation of a client if: ...

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

20 (7) Other good cause for withdrawal exists.

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

26 (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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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.

As demonstrated by the accompanying Davis Declaration, Fennemore Craig has complied with the relevant local and ethical rules. This appeal was perfected. Efforts were made to locate new counsel for Mr. Serino through other pro bono organizations. Furthermore, Mr. Serino does not object to the withdrawal of Ms. Davis as his counsel. The Motion should therefore be granted.

**V.
CONCLUSION**

For all of the reasons set forth above, an Order should be entered which: (1) approves withdrawal of Ms. Davis as counsel for Mr. Serino; (2) provides Mr. Serino with an additional 30 days to prepare and file his opening brief as well as his reply brief; and (3) for any further relief that the court deems appropriate under the circumstances.

DATED this 8th day of July, 2010.

FENNEMORE CRAIG, P.C.

/s/ Laurel E. Davis

By _____
LAUREL E. DAVIS

Pro Bono Counsel for Nicholas Serino,
Legal Aid Center of Southern Nevada

IT IS SO ORDERED.



UNITED STATES MAGISTRATE JUDGE

DATED: _____ 7-12-10 _____

