

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
RESIGNATION OF ATTORNEY
ROBERT EARL MCCARTHY.

No. 50798

FILED

APR 10 2008

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF REMAND

This is a petition for resignation from the state bar by attorney Robert Earl McCarthy, through his daughter, acting under a durable power of attorney.

Initially, neither McCarthy nor the state bar has demonstrated that a durable power of attorney may properly delegate authority to resign the principal's law license.¹ Moreover, even if a durable power of attorney could permissibly delegate such authority in certain circumstances, we are not satisfied that any unusual

¹See generally Restatement (Third) of Agency, § 3.04(3) and cmt. c (2006) (stating that certain actions are personal to the principal and may not be delegated to an attorney-in-fact); see also Heine v. Newman, Tannenbaum, Helpert, Syracuse & Hirschtritt, 856 F. Supp. 190, 194 n.4 (S.D.N.Y. 1994), aff'd, 50 F.3d 2 (2d Cir. 1995); Trenouth v. Mulroney, 227 P.2d 590, 595-96 (Mont. 1951); In re Estate of Kurrelmeyer, 895 A.2d 207, 213 (Vt. 2006); In re Guardianship of Muriel K., 640 N.W.2d 773, 779 n.6 (Wis. 2002). Examples of non-delegable actions usually include those related to divorce or other family law matters, wills, voting, and personal services contracts; we have found no case that specifically addresses a law license, or indeed any other professional license.

circumstances, justifying the durable power of attorney's use, have been demonstrated here. General contract rules of construction apply to a durable power of attorney: the instrument's plain language governs, unless it is ambiguous, in which case the court interprets the instrument so as to effect the principal's intent.² Thus, a broad grant of authority is generally given effect in a broad range of transactions, while a more specific grant is limited to those powers specifically listed.³ Here, the general grant of authority in McCarthy's durable power of attorney is quite broad, but the list of example powers includes only financial matters; the durable power of attorney does not even include health care decisions. Under these circumstances, it is not clear from the instrument's language alone whether McCarthy intended the durable power of attorney to confer on his daughter the authority to make decisions concerning McCarthy's law license.

Additionally, nothing in the record other than the durable power of attorney is signed by McCarthy, and nothing in the petition or its supporting documentation explains why McCarthy's daughter, rather than McCarthy himself, signed the resignation application. The application states that it is for resignation "under special circumstances," but the special circumstances are not expressed.


In light of these concerns, we decline to grant the petition for resignation at this time. Rather, we remand this matter to the Board of

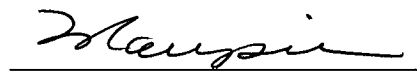
²Tennessee Farmers Life Reassurance Co. v. Rose, 239 S.W.3d 743, 750 (Tenn. 2007); Kurrelmeyer, 895 A.2d at 211.

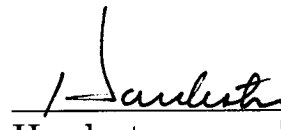
³Tennessee Farmers, 239 S.W.3d at 749; Schall v. Gilbert, 741 A.2d 286, 289 (Vt. 1999).

Governors or its designee for further consideration and compilation of a record that fully demonstrates why a durable power of attorney is an appropriate vehicle for McCarthy's resignation from the state bar. After the Board or its designee completes its review, then it shall file the petition and amended record in this court for further consideration.⁴

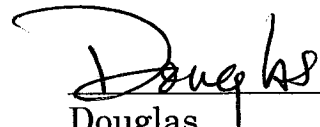
It is so ORDERED.

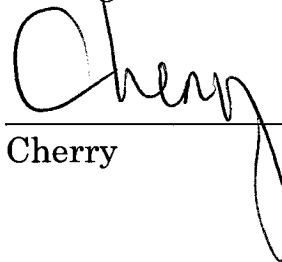

Gibbons, C.J.


Maupin, J.


Hardesty, J.


Parraguirre, J.


Douglas, J.


Cherry, J.


Saitta, J.

cc: Rob W. Bare, Bar Counsel
Kimberly K. Farmer, Executive Director
Robert Earl McCarthy

⁴This order constitutes our final disposition of this matter. The record shall be docketed as a new matter.