

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT A. NERSESIAN,

No. 36904

Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF WASHOE, AND THE
HONORABLE JANET J. BERRY, DISTRICT
JUDGE,

FILED

JAN 11 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

Respondents,

and

HS BAR LABOR POOL, LLC; SHORT GO
LIMITED PARTNERSHIP; AND DURHAM
SHORTHORN RAMBOUILLET MANAGEMENT
PARTNERS,

Real Parties in Interest.

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus, or a writ of prohibition, challenges the district court's denial of petitioner's motion to withdraw as counsel for defendants in the underlying action. A writ of mandamus is available to control an arbitrary or capricious exercise of discretion when petitioner has no plain, speedy and adequate remedy in the ordinary course of law.¹ This is such a case.

Petitioner is an attorney who filed an appearance and answer for the defendants in a 1997 lawsuit. After losing all contact with his clients, petitioner filed a motion to withdraw as their attorney because he could not adequately represent them. The district court denied the motion and ruled it would not allow petitioner to withdraw without first

¹See *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 637 P.2d 534 (1981); NRS 34.170.

filing a notice of substitution of counsel because a local court rule does not allow corporate parties to appear in proper person.²

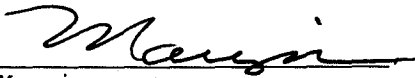
Petitioner renewed the motion orally during a telephone conference, arguing he should be allowed to withdraw because the attorney/client relationship had broken down completely and it was not feasible for him to obtain substitute counsel. The court again denied the motion, and the case is now set for trial on January 16, 2001.

We agree with petitioner that the district court's ruling has placed him in an untenable position and that his continued representation under these circumstances would be futile. Petitioner's clients have obviously abandoned him and do not plan to participate in the litigation or to pay for legal representation. SCR 166(2) permits an attorney to withdraw from representing a client who has rendered the representation unreasonably difficult or if other good cause exists. Once petitioner established he had satisfied SCR 166(2), the district court should have allowed him to withdraw. It would then have been up to the defendants in the underlying action to obtain new counsel in compliance with the district court rule if they wished to continue defending the suit. The district court should not have forced petitioner to continue representing the defendants under these circumstances simply because they are business entities, instead of individuals.

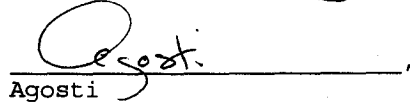
Accordingly, we grant the petition and direct the clerk of this court to issue a writ of mandamus compelling the district court to vacate its order denying petitioner's motion

²WDCR 23(5) ("A corporation may not appear in proper person.").

and to grant petitioner's motion to withdraw from representing the defendants in the matter of Mabile v. HS Bar Labor Pool, LLC, District Court Case No. CV97-01515.


Maupin C.J.


Shearing J.


Agosti J.

cc: Hon. Janet J. Berry, District Judge
Nersesian & Sankiewicz
Neal G. Jensen, Assistant U.S. Trustee,
U.S. Department of Justice
Walter J. Hoyt, III
Hale, Lane, Peek, Dennison, Howard & Anderson
Washoe County Clerk