

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA)
ex rel. Michael Zahara,)
Plaintiff,)
)
vs.) 1:06-cv-0088-SEB-JMS
)
SLM CORPORATION ET AL,)
Defendant.)

ENTRY ON MOTION TO WITHDRAW

This matter is before the magistrate judge on Plaintiff’s counsel’s Motion to Withdraw as Attorney (Dkt. # 29). A hearing was held on October 6, 2008 at which time the Court heard from counsel seeking to withdraw as well as their client, Michael Zahara. Evidence was submitted both at the hearing and subsequent to the hearing. Being duly advised, the magistrate judge **GRANTS** the motion for the reasons set forth below.

Counsel Larry Zoglin of Phillips & Cohen, LLP and Kathleen Sweeney of Schembs Sweeney Law (collectively, “counsel”) seek to withdraw as counsel of record for *qui tam* Plaintiff-Relator Michael Zahara (“Relator”). The United States has no objection to the motion and takes no position as to its merits other than to note that a *quit tam* plaintiff-relator may not appear *pro se*. Mr. Zahara objects to his counsel’s withdrawal.

Counsel allege an irremediable breakdown in the trust necessary to sustain the attorney-client relationship, which renders it unreasonably difficult for counsel to continue to represent Relator pursuant to Indiana Rule of Professional Conduct 1.16(b). Counsel further allege the breakdown is good cause for their withdrawal. Rule 1.16(b) provides, in relevant part, that counsel may withdraw from representing a client if the representation has been rendered

unreasonably difficult by the client or other good cause for withdrawal exists. In addition, because Relator objects to his counsels' motion, the Court must determine whether counsel have shown valid and compelling reasons for the withdrawal. *Woodall v. Drake Hotel, Inc.*, 913 F.2d 447, 449 (7th Cir. 1990).

After review of the evidence presented, the Court determines that the relationship between counsel and Relator has become dysfunctional. From counsel's perspective, a breakdown in trust has resulted from the discovery that Relator has been arrested for extortion, the circumstances surrounding that arrest, and Relator's failure to disclose the arrest to counsel. On Relator's part, he has questioned the competence of local counsel, Kathleen Sweeney, and leveled accusations of attorney misconduct as to Mary Louise Cohen, a partner in counsel Zoglin's firm. Cohen is not a counsel of record in this matter. However, she has apparently been actively involved in this case (although not before the Court).

Relator dismisses the pending charges against him as baseless, but offered no explanation as to why counsel weren't informed. After learning of Attorney Sweeney's experience in pursuit of government fraud claims as an Assistant United States Attorney, Relator apologized for his earlier insults. The toothpaste has, however, left the tube.

Relator persists in leveling accusations of ethical misconduct against Ms. Cohen. In the spring of this year, Ms. Cohen met the District Judge presiding over this matter, Judge Sarah Evans Barker, at a social event in Washington D.C. Judge Barker was attending the event in her capacity as President of the Federal Judges Association. The undisputed account of the conversation is that its content was purely social in nature, and had nothing to do with this case or any legal subject whatsoever. As such, no misconduct took place. If such social pleasantries were improper, meetings of bar associations and Inns of Court would be silent gatherings indeed.

Curiously, Relator contends counsel should overlook these baseless allegations and proceed apace.

Relator further argues that pursuant to the Retainer Agreement (Hearing Ex. 1) between the parties, the parties must submit to binding arbitration regarding the dispute over counsel's withdrawal. The Arbitration clause (§ 22) provides that should any unresolvable dispute regarding "any matter relating to this Retainer Agreement or the Lawsuit arise between the parties" the parties agree to submit the dispute to binding arbitration.

However, paragraph 17, regarding Termination of Representation, unequivocally states that counsel may withdraw if it determines "it is no longer feasible or desirable to pursue the Lawsuit" so long as 30 days written notice is provided to Relator. Further, paragraph 19 states that Relator will not object so long as the 30 days notice was given. The 30-day notice was given to Relator. Moreover, application of the arbitration clause cannot and should not override this Court's discretion as to the propriety of counsel's motion to withdraw. "The grant or denial of an attorney's motion to withdraw in a civil case is a matter addressed to the discretion of the trial court and will be reversed on appeal only when the trial court has abused its discretion." *Washington v. Sherwin Real Estate, Inc.*, 694 F.2d 1081, 1087 (7th Cir. 1982).

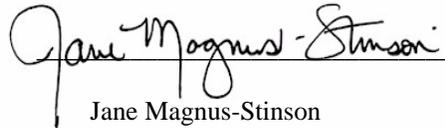
With respect to the progress of the case, the timing of counsel's motion to withdraw will not have any adverse effect upon Defendant, as Defendant has not yet been served. This matter was under seal until only recently while the government conducted an investigation of Relator's allegations. The case is currently stayed while the Court considers the instant motion.

The Court concludes, based upon a consideration of all of the evidence before it, that good cause exists for counsels' withdrawal, as continued representation has been rendered unreasonably difficult due to the circumstances described above caused by Relator's own

conduct. Therefore, the motion to withdraw is **GRANTED**. As noted earlier, Relator may not proceed *pro se* in this matter. Relator must retain counsel within 30 days or the case may be dismissed.

SO ORDERED.

10/29/2008



Jane Magnus-Stinson
United States Magistrate Judge
Southern District of Indiana

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¹Please note that the court will not mail copies of this entry to those attorneys of record who have not provided their email address to the court. As of September 1, 2004, the failure to register for the court's electronic filing system constitutes a violation of Local Rule 5.7(b). It is the responsibility of co-counsel who are registered to ensure that the entry is distributed to all non-registered counsel, and registered co-counsel also should urge all counsel to comply with the local rule and register to use the court's electronic filing system so that they may receive notice of future entries from the court by email. Information on how to register may be found on the court's website at http://www.insd.uscourts.gov/ecf_info.htm.

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