

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION

UNITED STATES OF AMERICA	)	DOCKET NO. 5:19-CR-00022-MOC
	)	
v.	)	
	)	
(2) JOHN D. GRAY	)	<b>RESPONSE IN OPPOSITION TO MOTION TO BE RELIEVED AS COUNSEL</b>
	)	

NOW COMES the United States of America, by and through the undersigned attorneys, and hereby responds in opposition to defense counsel’s Motion to Be Relieved as Counsel [Doc. #364] for the reasons set forth below.

**INTRODUCTION**

Approximately two and a half months before the peremptorily set retrial in a multi-defendant case that was originally tried three and a half years ago, counsel for Defendant Gray has moved to withdraw because of a third-party’s failure to satisfy their purported obligations to cover Defendant Gray’s legal fees. Further, it is anticipated that, if the motion is granted, Defendant Gray will move this Court for a continuance of the date set for trial, and that Defendant Lindberg would join or not oppose that request. While denial of the motion to withdraw may result in a foreseeable financial burden on counsel, that alone is insufficient to override the other interests at play—namely, proceeding with the long-scheduled retrial of this case in a timely fashion. Because no other good cause for withdrawal exists, the Court should exercise its broad discretion and deny counsel’s motion to withdraw.

**BACKGROUND**

On August 29, 2022, following the reversal of both Defendant Gray’s and Lindberg’s convictions by the Fourth Circuit Court of Appeals, this Court, upon motion of the United States, held a Status Conference to address scheduling the retrial of this matter. Transcript of Status

Conference [Doc. #345]. During the Status Conference, the parties and the Court addressed the status of counsel for Defendant Gray. *Id.* at 6-8. Specifically, attorney David A. Brown—who had been appointed to handle Defendant Gray’s appeal before the Fourth Circuit and had filed a limited notice of appearance in the District Court on August 19, 2022 [Doc. #340]—appeared and orally moved to withdraw based in part on representations that Brian Cromwell from the law firm of Parker Poe Adams & Bernstein LLP (“Parker Poe”) were engaged in conversations with Defendant Gray to represent him. [Doc. #345 at 8]. Mr. Brown filed a written motion to withdraw as counsel for Defendant Gray on September 8, 2022. [Doc. #343]. Mr. Cromwell was present during the Status Conference and indicated that his law firm intended to represent Defendant Gray in this matter, noting that they had “not solidified that representation yet,” but they anticipated they would “do so before Labor Day.” [Doc. #345 at 8].

Also discussed during the Status Conference was the fact that the United States would be making a substantial production of voluminous discovery to both defendants in this matter which would consist of materials collected during a separate financial investigation involving Defendant Lindberg.<sup>1</sup> *Id.* at 3-5, 7, and 9.

After the Status Conference, on August 31, 2022, the Court granted a motion to withdraw filed by Jack M. Knight, John H. Cobb and Patrick A. Doerr of the law firm Winston & Strawn LLP, who had represented Defendant Gray during the original trial of this matter. [Doc. #341]. On September 23, 2022, the Court granted Mr. Brown’s written motion to withdraw. [Doc. #344].

On November 21, 2022, as forecasted during the Status Conference, the United States made a discovery production to Defendant Lindberg which consisted of over 6.4 million pages of documents. The United States intended to make this production to Defendant Gray at the same

---

<sup>1</sup> Defendant Lindberg has since been indicted in connection with that investigation. *See United States v. Greg Lindberg*, 3:23-CR-00048-MOC-DSC.

time but was unable to do so because he had no attorney of record. The Government communicated with Mr. Cromwell regarding the size of the production that it intended it to make and the need to resolve Defendant Gray's representation status. Thereafter, on December 2, 2022, the Government filed a motion asking the Court to inquire as to the status of counsel for Defendant Gray. [Doc. #351]. A hearing was scheduled for December 19, 2022, but on December 16, 2022, Brian Cromwell and other attorneys from the law firm Parker Poe filed notices of appearance on behalf of Defendant Gray. [Doc. #s 352-354]. Notably, none of the notices indicated that their appearances were of a limited nature.

On December 30, 2022, with the consent of the Government and Defendant Lindberg, Defendant Gray moved to continue the trial date, then set for the Court's March 2023 criminal term. [Doc. #355]. Through supplemental pleadings, the parties asked the Court to peremptorily set the retrial of this matter for November 2023, and the Court agreed. [Doc. #s 357, 358]. Over seven months later, and two and half months before retrial, counsel for Defendant Gray filed the instant motion to withdraw. [Doc. # 364].

### **ARGUMENT**

Local Criminal Rule 44.1 incorporates by reference Local Civil Rule 83.1(f) which provides in pertinent part that "counsel seeking to withdraw must file written consent of their client to their withdrawal, which **shall become effective only upon Court approval**. Absent the client's consent, withdrawal may be obtained by filing a motion to withdraw, **showing good cause for the withdrawal**." (Emphasis added). Moreover, while North Carolina Rule of Professional Conduct 1.16(b) provides the circumstances by and for which a North Carolina lawyer may seek to withdraw from representation of a client, Rule 1.16(c) goes on to state that "[w]hen ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating

the representation.” “It is fundamental that an attorney is not at liberty to abandon a case without (1) justifiable cause, (2) reasonable notice to his client, and (3) the permission of the court.” *Champboat Series, LLC v. IN2FOCUS Films, Inc.*, No. 3:09-CV-183-RJC-DCK, 2009 WL 10728587, at \*1 (W.D.N.C. Nov. 16, 2009). While representation that would “result in an unreasonable financial burden” is an explicit basis upon which a lawyer may seek to withdraw pursuant to N.C.R.P.C. 1.16(b), it must be weighed against the impact such withdrawal would have on the litigation. *See Spann v. N. Carolina Dep’t of Pub. Safety*, No. 1:17-cv-00104-MOC-DLH, 2017 WL 6041939, at \*2 (W.D.N.C. Dec. 6, 2017). In analyzing a motion to withdraw under a similar set of local and ethical rules, a district court in the Eastern District of Virginia remarked “the mere nonpayment of fees is usually not a sufficient basis, standing alone, to override the attorney’s ethical responsibilities of continued representation of a client.” *United States SEC v. Woodard*, 2:13-cv-16, 2014 U.S. Dist. LEXIS 35417, at \*3-4 (internal citations and quotations omitted). “Furthermore, before granting a motion to withdraw, a district court may properly consider any disruptive impact the withdrawal would have on the pending case.” *Id.* “In all cases, the court must still consider the potential prejudice to all parties involved and the potential disruption to the administration of justice from attorney withdrawal.” *Abbott v. Gordon*, No. 8:09-cv-372, 2010 WL 4183334, at \*3 (D. Md. Oct. 25, 2010).

While two and half months before trial, in many cases, may not be considered disruptive, the same cannot be said here where the case was originally tried three and a half years ago, was remanded over a year ago, has been peremptorily set for retrial alongside a co-defendant over five months ago, and involves voluminous discovery. Because withdrawal and the appointment or

retention of new counsel would likely result in an adjournment of the current trial date and a lengthy continuance, the instant motion to withdraw should be denied.<sup>2</sup>

Additionally, many of the cases seeking withdrawal due to an unreasonable financial burden also involve a failure of the client to pay legal fees based on an engagement agreement between the lawyer and the client. For example, in *Gordon*, as the court analyzed a motion to withdraw pursuant to both the unreasonable financial burden prong as well as Maryland Rule of Professional Conduct 1.16(b)(5)<sup>3</sup>, which provides a basis for a lawyer to seek to withdraw when “the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer’s services,” the district court remarked that “Courts routinely permit attorney withdrawal where clients fail to pay fees in accordance with the terms of engagement.” *Gordon*, 2010 WL 4183334, at \*2 (citations omitted). Notably, counsel for Defendant Gray does not allege that Defendant Gray himself has breached a financial obligation to counsel or counsel’s firm. Instead, the motion explicitly states that a third-party, Eli-Global, LLC, is the party which has not satisfied its purported financial obligations. [Doc. # 364 at 1]. Further, counsel for Defendant Gray does not indicate, for example, whether the firm has been paid for its services thus far, how much they have been paid, whether they have taken steps to collect any unpaid amounts due (and, if so, what steps were taken), or what the consequences would be for the firm if it were to remain in this case. Without this information and more, counsel for Defendant Gray has not met its burden to

---

<sup>2</sup> The Fourth Circuit reviews a district court’s decision denying a motion to withdraw under the abuse of discretion standard. *United States v. Johnson*, 114 F.3d 435, 442 (4th Cir. 1997) (citing *United States v. Mullen*, 32 F.3d 891, 895 (4th Cir.1994)). The three factors used in determining whether a district court has abused its discretion are “(1) timeliness of the motion; (2) adequacy of the court’s inquiry; and (3) whether the attorney/client conflict was so great that it resulted in a total lack of communication preventing an adequate defense.” *Id.* As to the first factor, the motion should be considered untimely given the unique circumstances and procedural history of this case. The third factor is inapposite in that counsel for Defendant Gray does not claim that there is any attorney-client conflict, let alone a conflict that has “resulted in a total lack of communication preventing an adequate defense.”

<sup>3</sup> M.R.P.C. 1.16(b)(5) is identical to N.C.R.P.C. 1.16(b)(6).

demonstrate that it will suffer an unreasonable financial burden unless permitted to withdraw from this case. *See e.g., Edwards v. Oliver*, No. 3:17-CV-1208-M-BT, 2022 WL 4820147, at \*4 (N.D. Tex. Sept. 30, 2022) (denying motion to withdraw when third-party stopped paying for defendant’s legal fees, stating “[t]he Court does not dispute that Krueger’s continued representation of Oliver without any guarantee of payment may result in a financial burden to Krueger. But the record does not support a finding that any such burden would be unreasonable.”).

**CONCLUSION**

WHEREFORE, for the reasons stated above, the Government respectfully requests that this Honorable Court set a hearing on this matter and ultimately deny counsel’s Motion to Be Relieved as Counsel, and enter any other order it deems necessary and appropriate.

RESPECTFULLY SUBMITTED, this 24<sup>th</sup> day of August, 2023.

DENA J. KING  
UNITED STATES ATTORNEY

**s/ Lawrence J. Cameron**  
Lawrence Cameron  
Assistant United States Attorney  
North Carolina Bar # 41922  
227 West Trade Street, Suite 1650  
Charlotte, North Carolina 28202  
(704) 344-6222 (office)  
(704) 344-6629 (facsimile)  
Email: [Lawrence.Cameron@usdoj.gov](mailto:Lawrence.Cameron@usdoj.gov)

**s/ Dana O. Washington**  
Dana Washington  
Assistant United States Attorney  
Virginia Bar # 31981  
227 West Trade Street, Suite 1650  
Charlotte, North Carolina 28202  
(704) 344-6222 (office)  
(704) 344-6629 (facsimile)  
Email: [Dana.Washington@usdoj.gov](mailto:Dana.Washington@usdoj.gov)

COREY R. AMUNDSON  
Chief, Public Integrity Section  
Criminal Division

*/s/ William J. Gullotta*

William J. Gullotta  
Trial Attorney  
Public Integrity Section  
Criminal Division  
Connecticut Bar # 423420  
U.S. Department of Justice  
1301 New York Avenue NW  
Washington, DC 20530  
Telephone: (202) 514-0014  
Email: [William.Gullotta2@usdoj.gov](mailto:William.Gullotta2@usdoj.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 24<sup>th</sup> day of August, 2023, the foregoing document was served electronically through ECF filing upon counsel of record for the defendant at the following addresses:

Brian Cromwell  
[briancromwell@parkerpoe.com](mailto:briancromwell@parkerpoe.com)

Sarah Fulton Hutchins  
[sarahhutchins@parkerpoe.com](mailto:sarahhutchins@parkerpoe.com)

*/s/ Lawrence J. Cameron*  
Lawrence J. Cameron  
Assistant United States Attorney