

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

| | | |
|---------------------------------------|---|-----------------------------|
| MASHA ALLEN, by her Parent and | : | |
| Guardian FAITH ALLEN | : | DOCKET NO. 08 CV 4614 (JHR) |
| | : | |
| vs. | : | |
| | : | |
| FAMILIES THRU INTERNATIONAL | : | |
| ADOPTION, INC., CHILD PROMISE, | : | |
| INC. (formerly known as Reaching Out | : | |
| Through International Adoption, Inc), | : | |
| REACHING OUT THRU | : | |
| INTERNATIONAL ADOPTION, INC. and | : | |
| JEANNENE SMITH | : | |

**SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF MOTION OF
COUNSEL FOR PLAINTIFFS FOR LEAVE TO WITHDRAW**

Robert N. Hunn
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215-851-9700

Counsel For The Plaintiffs

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Petitioners, Robert N. Hunn, Esquire and Kolsby, Gordon, Robin, Shore & Bezar (“Petitioners”) hereby submit a supplemental memorandum in support of Petitioner’s Motion For Leave to Withdraw as Counsel For the Plaintiffs.

Petitioners have filed a Motion For Leave of Court to Withdraw as Counsel for The Plaintiffs. Although none of the defendants object to Petitioners’ request to withdraw, defendant Jeannene Smith has filed a letter with the court objecting to Petitioners and plaintiffs having ex-parte communications with the court to discuss the reasons for the withdraw. Petitioners do not wish for defendants to be present during any such conversation because of the risk that privileged information, pursuant to the attorney client privilege, would be disclosed.

During a telephonic conference with the court on April 6, 2009, the court requested that plaintiffs’ counsel research the issue of whether the court can have an ex-parte discussion with counsel regarding his reasons for seeking leave to withdraw. Thorough research of this issue has not revealed any cases where the specific issue was addressed. However, Petitioners believe that the court has the right and discretion to hold an ex-parte discussion with an attorney where the issue is not a substantive case issue but one that likely involves attorney client communications.

Defendant Jeannene Smith has objected to Petitioners having ex-parte discussions with the court on the grounds that such a discussion constitutes a “back room deal between a few of the stakeholders, which leaves the rest of us out in the cold.” Undated Smith Letter attached

hereto as Exhibit "A." Defendant Smith also describes the requested ex-parte communication as "secret or Star Chamber" discussion. Nothing could be further from the truth.

Petitioners' Motion to For Leave To Withdraw and the reasons behind the motion has no bearing on defendant Smith. The communications that Petitioners seek to have with the court have no bearing or relevancy to the substantive issues in the case. Rather, they are communications in support of Petitioners' Motion for Leave to Withdraw. As such, they are communications that will likely involve a disclosure of attorney client information; information that is privilege. Ms. Smith has no right to hear attorney client information and since this is the sole reason for the ex parte communication, Ms. Smith will not be prejudiced in any way if she is not included in the conversation.

The federal court has longed recognized that the attorney client privilege is the oldest of the privileges for confidential communications known to the common law. Upjohn Co. v. United States, 449 U.S. 383 (U.S.S.C. 1981). "Its purpose is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice. Id. The attorney client privilege is "so sacred" and so "compelling important" that the courts must, within their limits, guard it jealously. Haines v. Liggett Group, Inc. 975 F. 2d 81 (3rd Cir. 1992).

Petitioners submit that the interests of justice are best served if Petitioners are permitted to disclose their reasons for seeking leave to withdraw in private with the court. These reasons will likely include the disclosure of privileged communications with Petitioners' client. Defendant Smith has no right to hear privileged information. Consequently, she will not be prejudiced by not being present for the in camera discussion. However, the plaintiffs would be

grossly prejudiced if defendant Smith was present for the conversation and heard attorney client communications. Moreover, the court's ability to fully and fairly consider Petitioner's Motion For Leave to Withdraw will be impaired if the court is unable to hold ex-parte discussions between Petitioners and plaintiff. It is in the court's best interest to have as much information as possible before deciding Petitioners' motion. In weighing the prejudice under these circumstances, clearly justice is better served by the court permitting ex-parte discussions with Petitioners and plaintiffs.

As previously noted, Petitioners' reasons for withdrawing as counsel for plaintiffs have no bearing on the substantive issues in this case. Without disclosing attorney client privileged information, a partial basis for Petitioners' reasons to withdraw are as follows:

- Attorney David S. Bills is an attorney in Atlanta, Georgia and has a long standing attorney client professional relationship with the plaintiffs Masha and Faith Allen. Mr. Bills is licensed to practice law in Georgia.
- Attorney Bills directed his client, Faith Allen, to retain the law firm of Kolsby, Gordon, Robin, Shore & Bezar, a firm which maintains offices in Pennsylvania and New Jersey, to represent Masha and Faith Allen in the instant litigation.
- In accordance with the terms of the engagement, Robert N. Hunn, a partner in Kolsby, Gordon, Robin, Shore & Bezar, instituted the instant litigation in September of 2008.
- Commencing in early January of 2009 a dispute arose between Mr. Bills and Mr. Hunn.
- The dispute directly impacts on Mr. Hunn's ability to represent the plaintiffs.
- As a result of the dispute, Faith Allen refuses to speak to Mr. Hunn unless Mr. Bills is present.
- As a result of the dispute, the relationship between Mr. Bills and Mr. Hunn has deteriorated to the point where Mr. Bills and Mr. Hunn can no longer work together or speak to each other by telephone. What little communications exist between Mr. Bills and Mr. Hunn is through email and letter.

- As a result of the dispute and his inability to speak directly with the client, Mr. Hunn is unable to provide competent legal services to the plaintiffs.

While Petitioners believe the above statements are sufficient grounds for leave to withdraw, Petitioners further believe that the court would benefit from meeting privately with Petitioners and plaintiffs to discuss the issue in further detail. For the reasons set forth herein, Petitioners submit that an ex-parte discussion between Petitioners, plaintiffs and the court is warranted under the circumstances.

KOLSBY, GORDON, ROBIN, SHORE & BEZAR

BY: Robert N. Hunn
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The Honorable Ann M. Donio
Magistrate Judge
UNITED STATES DISTRICT COURT
for NEW JERSEY - Camden
One John F. Gerry Plaza
U. S. Courthouse
Camden, NJ 08101-2797

Ref: Docket 08-CV-4614
Allen v. FTIA, et al

Dear Judge Donio:

I write by letter to request clarification as to Robert Hunn's application for "oral argument" and/or "in camera review" which would exclude Mr. Cofsky and myself regarding his reasons for withdrawing from this case.

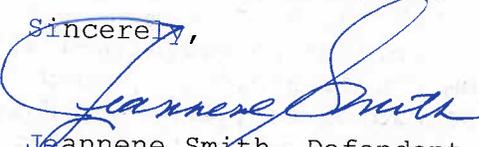
1. I do not oppose Mr. Hunn's Motion to Withdraw and therefore I will not file a Response;
2. I do not oppose Mr. Bills' request for an extension of time to respond to Mr. Hunn's Motion and rely instead on the Court's discretion;
3. In consideration of full disclosure of all relevant information, I do object to any secret, or Star Chamber, discussions that go to fundamental issues in this litigation - which is why I write.

Given the history of this case, I believe it is incumbent upon the Court to allow Mr. Cofsky and myself to be present at any oral representations made by Mr. Hunn in support of his Motion. His Motion must stand on its own merits regardless of whether or not Mr. Cofsky or I file a written opposition. It would seem Faith Allen does oppose it and therefore a record should be made.

A telephone conference would be fine with me; if there is some attorney/client privilege issue, then a type of mutual non-disclosure among the parties and their counsel may be appropriate. But I object to some "back room" deal between a few of the stakeholders, which leaves the rest of us out in the cold - this matter's history over the past decade is replete with many instances of that occurring already.

However, I am not familiar with the Court's preferred manner of dealing with an attorney in conflict with his client. I appreciate your time in considering my request to participate.

Sincerely,


Jeannene Smith, Defendant

cc: all parties' counsel

date: Tuesday, March 31, 2009

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