

TABLE OF CITATIONS

<u>Cases</u>	<u>Page</u>
<i>Cohen v. Radio-Electronics Officers</i> , 275 N.J. Super. 241, 254, 645 A.2d 1248 (1994).....	5
<i>Dwyer v. Jung</i> , 133 N.J. Super. 343, 347, 336 A.2d 498 (Ch. Div.1975).....	5
<i>Gilles v. Wiley</i> , 345 N.J. Super. 119, 128-129, 783 A.2d 756 (2001).....	6
<i>Haines v. Liggett Group, Inc.</i> , 814 F. Supp. 414, 422-424 (D.N.J. 1993).....	6, 7
<i>In the Matter of Cooperman</i> , 83 N.Y.2d 465, 472, 611 N.Y.S.2d 465, 467, 633 N.E.2d 1069, 1070 (1994).....	5
<i>Karlin v. Weinberg</i> , 77 N.J. 408, 418-419, 390 A.2d 1161 (1978).....	5
<i>Kriegsman v. Kriegsman</i> , 150 N.J. Super. 474, 479-480 (App. Div. 1977).....	6
<i>McKowan Lowe & Co., LTD. v. Jasmin, LTD.</i> , (D.N.J., September 12, 2005) [unpublished Order].....	6
<i>Rusinow v. Kamara</i> , 920 F. Supp. 69 (D.N.J. 1996).....	6
 <u>Rules</u>	
Local Civil and Criminal Rules of the United States District Court for the District of New Jersey, L. Civ. R. 103.1(a).....	6
New Jersey Rules of Professional Conduct, Rule 1.16(b), (c).....	6

Plaintiff Masha Allen, by her parent and guardian Faith Allen, submits her Brief in Opposition of Motion of Counsel for Leave to Withdraw, as follows:

I. STATEMENT OF FACTS

Plaintiff generally agrees with the brief statement regarding the nature of this action and the issues presented in the action, as alleged in her Complaint filed by attorney Robert N. Hunn and the law firm of Kolsby, Gordon, Robin, Shore & Bezar (hereinafter, “KGRSB” or “Movants”), and contained under the sub-heading “Underlying Litigation” at page 3 of the Brief in Support of Motion of Counsel to Withdraw.

On July 11, 2008, Plaintiff’s personal attorney, David S. Bills of Atlanta, Georgia, contacted Allan H. Gordon of KGRSB regarding the potential representation of the minor client, to include, but not be limited to her claims presently pending in this action. On August 4, 2008, a meeting occurred in Pittsburgh, Pennsylvania between the minor client, Masha Allen, her mother, Faith Allen, Mr. Bills, and Mr. Gordon and Mr. Hunn of KGRSB. At this meeting, Mr. Gordon and Mr. Hunn agreed to undertake the representation, submitted a contingency fee agreement that was then executed by both Masha Allen and Faith Allen, thereby retaining KGRSB with respect to “PA/NJ Adoption Cases”, which by its terms included, but was not limited to the claims asserted in the present action. This written agreement specifically acknowledged that Mr. Bills was the referring attorney and an arrangement for the division of fees had been made between the attorneys.

At all relevant times, it was the clear understanding of, at least, Mr. Bills and the clients that Mr. Bills would remain fully involved and actively participate in the representation. Further, at all relevant times, Mr. Bills did remain fully involved in the joint, collaborative

representation, assisting in a variety of appropriate manners and making important contributions to the representation.

Beginning in early January, 2009 and continuing through February 24, 2009, there were a series of communications between the clients, Mr. Bills and KGRSB regarding certain matters as to which unanimity was absent. Plaintiff disagrees with Movants' assertion that any such matters amounted to or gave rise to "irreconcilable differences making it impossible" for Movants to continue as counsel in this action. Further, Plaintiff disagrees with the assertion that Mr. Bills and Faith Allen were informed on January 30, 2009 of any alleged "irreconcilable differences" or any decision by Movants to file a motion seeking leave to withdraw as counsel.

To the contrary, after January 30, 2009, Mr. Bills and KGRSB continued to have numerous constructive communications with respect to the matters in question, including numerous telephone conversations and email messages, and a lengthy letter dated February 23, 2009 from Mr. Bills to KGRSB. It was not until the next day, February 24, 2009, that KGRSB for the first time notified Mr. Bills of its decision to seek leave to withdraw.

Even after this notification, Mr. Bills continued to make significant efforts to constructively address the matters in question, proposing possible solutions and interim measures to avoid foreseeable prejudice. In a conference call with Ms. Allen and Mr. Bills on Monday, March 9, 2009, Mr. Hunn advised that KGRSB intended to file for withdrawal that week. The next day, March 10, 2009, the pending Motion was filed.

Plaintiff agrees that disclosure into public record of the matters in question could itself be prejudicial to the interest of the minor client and thus joins in Movant's suggestion that the issues could more appropriately and more fully be addressed in an *in camera* proceeding.

II. ARGUMENT

It is a well-established under New Jersey law that the attorney-client relationship is highly fiduciary on the part of counsel and is imbued with ultimate trust and confidence, with the attorney's obligations transcending those prevailing in the commercial marketplace and imposing special and unique duties, to include the utmost fair and honest dealings, undivided loyalty, and safeguarding and honoring the client's interest over the lawyer's. See e.g., Karlin v. Weinberg, 77 N.J. 408, 418-419, 390 A.2d 1161 (1978); Dwyer v. Jung, 133 N.J. Super. 343, 347, 336 A.2d 498 (Ch. Div. 1975); Cohen v. Radio-Electronics Officers, 275 N.J. Super. 241, 254, 645 A.2d 1248 (1994) (quoting with approval In the Matter of Cooperman, 83 N.Y.2d 465, 472, 611 N.Y.S.2d 465, 467, 633 N.E.2d 1069, 1070 (1994)).

Accordingly, as a general proposition, New Jersey law seems quite clear that the withdrawal of counsel in circumstances such as may be presented in the present action can properly be disallowed. The following statement is illustrative of the concerns expressed in the decisions:

When a firm accepts a retainer to conduct a legal proceeding, it impliedly agrees to prosecute the matter to a conclusion. The firm is not at liberty to abandon the case without justification or reasonable cause, or the consent of its client.

* * *

[A]n attorney has certain obligations and duties to a client once representation is undertaken. These obligations do not evaporate because the case becomes more complicated or the work more arduous or the retainer is not as profitable as first contemplated or imagined ... Attorneys must never lose sight of the fact that "the profession is a branch of the administration of justice and not a mere money-getting trade." Canons of Professional Ethics, No. 12. As Canon 44 of the Canons of Professional Ethics so appropriately states: "The lawyers should not throw out the unfinished task to the detriment of his client except for reasons of honor or self-respect."

Kriegsman v. Kriegsman, 150 N.J. Super. 474, 479-480 (App. Div. 1977) (internal citation omitted). Accord, Gilles v. Wiley, 345 N.J. Super. 119, 128-129, 783 A.2d 756 (2001); Haines v. Liggett Group, Inc., 814 F. Supp. 414, 422-424 (D.N.J. 1993).

Under the Local Civil Rules of this Court, the Rules of Professional Conduct of the American Bar Association as revised by the New Jersey Supreme Court govern the conduct of attorneys admitted to practice in the Court. L. Civ. R. 103.1(a).

The decision to allow withdrawal of counsel under the provisions of Rule 1.16(b), (c) of the New Jersey Rules of Professional Conduct, is entirely within the discretion of the Court. As such, withdrawal may properly be refused despite a showing of good cause. See e.g., McKowan Lowe & Co., LTD. v. Jasmin, LTD., (D.N.J., September 12, 2005).¹

In exercise of such discretion, the Court should look to the following factors: (1) the reasons withdrawal is sought; (2) the prejudice withdrawal may cause the other litigants; (3) the harm withdrawal may cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. See e.g., Rusinow v. Kamara, 920 F. Supp. 69 (D.N.J. 1996); Haines v. Liggett Group, Inc., *supra*, 814 F. Supp. at 422-423.

In the present action, Plaintiff maintains that Movants have not and cannot make an adequate showing of good cause for withdrawal under Rule 1.16(b) of the New Jersey Rules of Professional Conduct; and, alternatively, that even assuming Movants have made or may make a minimally adequate showing of good cause, the present motion should nevertheless be properly denied given the unnecessary and substantial risks of material prejudice to the minor client's interest, the other parties' interest, and the Court's interest in the orderly and efficient

¹ Attached as Exhibit "A" for the convenience of the Court is a copy of this unpublished opinion.

administration of justice.

More specifically, Plaintiff submits that for Movants to be allowed to withdraw, in the absence of substitute counsel having been retained and standing ready to make an appearance and proceed with the discovery process and any pending motions, would significantly impair the minor client's ability to maintain the action. Briefly, in light of the inadvisability of a more complete discussion taking place in the public record, it is believed that the withdrawal of counsel would unreasonably subject the minor client to unnecessary risks of prejudice, which would be avoided only by extraordinary good fortune in retaining appropriate substitute counsel in a relatively short period of time.

In this regard, Movants' suggestion that the potential for prejudice could be ameliorated by a sixty day stay of proceedings is believed in all likelihood to be insufficient to adequately protect the minor client's interest.

Finally, Plaintiff submits that as was true in Haines v. Liggett Group, Inc., *supra*, 814 F. Supp. 426-428, there are important public policy considerations regarding access to justice and the proper administration of the business of this Court that would be ill-served by permitting Movants to withdraw from this action, effectively abandoning the minor client.

III. CONCLUSION

Accordingly, Plaintiff Masha Allen respectfully requests this Honorable Court deny the Motion for Leave to Withdraw as Counsel.

Respectfully Submitted,

Dated: April 7, 2009

/s/ Steven A. Haber
Steven A. Haber, Esquire
Obermayer Rebmann Maxwell & Hippel LLP
Special, Limited Appearance Counsel for Plaintiff
Suite 300, 20 Brace Road
Cherry Hill, NJ 08034
Telephone: (856) 795-3300
Fax: (856) 795-8843
sah@obermayer.com (e-mail)

EXHIBIT "A"

NOT FOR PUBLICATION

(Docket Entry No. 398)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

McKOWAN LOWE & CO., LTD.,	:	
	:	
Plaintiff,	:	Civil No. 94-5522 (RBK)
	:	
v.	:	OPINION
	:	
JASMINE, LTD., et al.,	:	
	:	
Defendants.	:	

KUGLER, United States District Judge:

This matter comes before the Court on appeal from a magistrate judge's order denying movant, Cary L. Flitter and the Law Firm of Lundy, Flitter, Beldecos & Berger, P.A. ("Flitter"), leave to withdraw as counsel for defendant Edward Maskaly ("Defendant").

I. Background

Flitter currently represents Defendant in a securities fraud class action against Jasmine, Ltd. Defendant was Jasmine's Managing Director - Finance/Administration, CFO, and one of its Directors. Over the course of the ongoing representation, Defendant allegedly incurred \$5,000 of unpaid legal bills and has been unresponsive to many of his counsel's attempts to communicate.

Flitter filed an initial motion to withdraw as counsel for Defendant on February 2, 2005, which was not opposed by either Defendant or the opposing party to the litigation. Magistrate Judge Ann Marie Donio denied Flitter's motion to withdraw without prejudice. Flitter filed a motion for reconsideration, which was also denied.

Treating the motion for reconsideration as a renewed motion to withdraw, Judge Donio found that Flitter failed to establish a sufficient basis to permit withdrawal. Specifically, Judge Donio held that the representation is not placing an unreasonable financial burden on Flitter or his law firm and that, while Flitter has clearly had difficulty communicating with his client, there has not been a complete cessation of communication. Judge Donio also noted that withdrawal would adversely affect relevant equitable considerations. In particular, withdrawal would result in prejudice to other litigants and to the administration of justice since there is no indication that Defendant will be able to adequately represent himself or obtain substitute counsel.

II. Jurisdiction and Standard of Review

Under 28 United States Code § 636(b)(1)(A), a district court may not set aside a magistrate's determination of a pretrial matter unless "it has been shown that the magistrate's order is clearly erroneous or contrary to law." 28 U.S.C. §

636(b) (1) (A). See also United Steelworkers of America v. New Jersey Zinc, 828 F.2d 1001 (3d Cir.1987). An order is clearly erroneous only when the Court "is left with a definite and firm conviction that a mistake has been made." South Seas Catamaran, Inc. v. M/V Leeway, 120 F.R.D. 17, 21 (D.N.J.1988), aff'd, 993 F.2d 878 (3d Cir.1993) (quoting United States v. United States Gypsum Co., 333 U.S. 364, 395 (1948)). The party filing the notice of appeal bears the burden of demonstrating that the magistrate judge's decision was clearly erroneous or contrary to law. Exxon Corp. v. Halcon Shipping Co., Ltd., 156 F.R.D. 589, 591 (D.N.J.1994).

III. Discussion

Unless other counsel is substituted, counsel may withdraw only with leave of court. L. Civ. R. 102.1.¹ Permission to withdraw is entirely within the discretion of the court, and a court may, therefore, refuse to allow withdrawal despite a showing of good cause.² R. Prof'l Conduct 1.16(c); Rusinow v. Kamara, 920 F. Supp. 69, 71 (D.N.J. 1996); United States v.

¹ Local Civil Rule 102.1 reads in full: "Unless other counsel is substituted, no attorney may withdraw an appearance except by leave of Court. After a case has been first set for trial, substitution and withdrawal shall not be permitted except by leave of Court." L. Civ. R. 102.1.

² Rule of Professional Conduct 1.16(c) states: "[A] lawyer shall continue representation notwithstanding good cause for terminating the representation" when so ordered by the court. RPC 1.16(c).

Cannistraro, 799 F. Supp. 410, 419 (D.N.J.1992).

In exercising its discretion, the court should look to four guiding factors: (1) the reasons withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of a case. See Comment, L. Civ. R. 18; Rusinow v. Kamara, 920 F. Supp. 69 (D.N.J.,1996); Haines v. Liggett Group, Inc., 814 F.Supp. 414, 422-23 (D.N.J.,1993).

Judge Donio carefully evaluated each of these four criteria to determine that the Flitter's reasons for withdrawal were inadequate, particularly in light of the relevant equitable considerations. Defendant is a high-level officer of a corporation currently defending itself against significant allegations of securities fraud. Since there are no indications that Defendant will hire substitute counsel, and since Defendant does not appear prepared to defend himself, Flitter's withdrawal would inhibit the administration of justice and prejudice the other litigants in this case.

The Court found that these considerations weighed strongly against granting Flitter leave to withdraw. This determination was well within the court's discretion and was neither clearly erroneous nor contrary to law. Because Flitter has failed to satisfy his burden of demonstrating that this

decision was clearly erroneous, the magistrate's order is affirmed.

The accompanying Order shall issue today.

Dated: 9-12-05 /s/ Robert B. Kugler
ROBERT B. KUGLER
United States District Judge

CERTIFICATE OF SERVICE

This is to certify that true copies of the foregoing PLAINTIFF'S BRIEF IN
OPPOSITION TO MOTION OF COUNSEL TO WITHDRAW have been served by placing
same in the United States Mail, with adequate postage thereon, addressed to:

Robert N. Hunn, Esq.
Kolsby Gordon Robin Shore & Brazar
2000 Market Street, 28th Floor
Philadelphia, PA 19103

David S. Bills, Esq.
David S. Bills, P.C.
Tower Place 100, Suite 1530
3340 Peachtree Road, N.E.
Atlanta, GA 30326

Donald C. Cofsky, Esq.
Cofsky & Ziedman, LLC
209 North Haddon Avenue
Haddonfield, NJ 08033-2322

Jeannene Smith
312 S. Lincoln Avenue
Cherry Hill, NJ 08002

Dated: April 7, 2009

/s/ Steven A. Haber
Steven A. Haber, Esquire
Obermayer Rebmann Maxwell & Hippel LLP
Special, Limited Appearance Counsel for Plaintiff
Suite 300, 20 Brace Road
Cherry Hill, NJ 08034
Telephone: (856) 795-3300
Fax: (856) 795-8843
sah@obermayer.com (e-mail)

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

MASHA ALLEN, by her Parent and
Guardian FAITH ALLEN,

Plaintiff,

vs.

DOCKET NO. 1:08-CV-04614-JHR-AMD

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,

Defendants.

ORDER

AND NOW, this _____ day of _____, 2009, upon consideration
of Counsels' Motion to Withdraw and Plaintiff's opposition thereto, it is hereby **ORDERED** that
Counsel's Motion to Withdraw is **DENIED**.

BY THE COURT:

J.