

NOW THEREFORE IT IS HEREBY ORDERED that respondent attorney Edward T. Buckingham III is immediately suspended from the practice of law in the Federated States of Micronesia. He may apply for reinstatement, FSM Dis. R. 13, once his right to practice law has been reinstated in both the State of Colorado and the Commonwealth of the Northern Mariana Islands or once five years has elapsed, whichever is sooner.

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FSM SUPREME COURT TRIAL DIVISION

BANK OF HAWAII,)	CIVIL ACTION NO. 2004-023
)	
Plaintiff,)	
)	
vs.)	
)	
MARLENE HELGENBERGER and)	
YALMER HELGENBERGER,)	
)	
Defendants.)	
_____)	

ORDER PARTIALLY GRANTING WITHDRAWAL OF COUNSEL

Beauleen Carl-Worswick
Associate Justice

Decided: October 17, 2014

APPEARANCE:

For the Defendants: Marstella E. Jack, Esq.
P.O. Box 2210
Kolonias, Pohnpei FM 96941

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HEADNOTES

Attorney and Client – Withdrawal of Counsel

The withdrawal of counsel from the legal representation of a client is governed by FSM MRPC Rule 1.16. Bank of Hawaii v. Helgenberger, 19 FSM R. 584, 585 (Pon. 2014).

Attorney and Client – Withdrawal of Counsel

When the court has not been notified on the record at the representation’s start that counsel’s representation was limited, counsel then must seek the court’s permission to withdraw when he believes his representation has come to an end. Bank of Hawaii v. Helgenberger, 19 FSM R. 584, 586 (Pon. 2014).

Attorney and Client – Withdrawal of Counsel

FSM MRPC Rule 1.16(d) is a nonexclusive list of steps that an attorney must take to protect

client's interests before the court will grant the withdrawal. The reasonably practicable efforts to protect a client's interests have been persuasively interpreted by our state courts to include assisting the client in obtaining substitute counsel. Bank of Hawaii v. Helgenberger, 19 FSM R. 584, 586 (Pon. 2014).

Attorney and Client – Withdrawal of Counsel

When counsel has represented a married couple who are now divorcing; when the clients are no longer cooperating or communicating with counsel nor have they paid any attorney fees; and when the husband has obtained new counsel of record who cannot represent the wife, counsel must continue to represent the wife until substitute counsel is found or counsel is otherwise released by the court since in such circumstances, the court usually requires the attorney to assist the client in finding substitute counsel or demonstrate why this is not reasonably practical to do so before granting the withdrawal. Bank of Hawaii v. Helgenberger, 19 FSM R. 584, 586-87 (Pon. 2014).

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COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

I. BACKGROUND

On December 19, 2012, counsel for the defendants, Marstella E. Jack (Jack), Esq., filed a Motion to Withdraw as Counsel in this matter which was denied by the court because the requirements under FSM MRPC Rule 1.16 for termination of representation were not met. On April 10, 2013, Jack filed another Motion to Withdraw, which was again denied for similar reasons. On January 10, 2014, in a hearing, Jack orally requested that her representation of Yalmer Helgenberger be terminated, but that Jack continue to represent Marlene Helgenberger. On September 5, 2014, in yet another hearing, Jack requested that she be allowed to withdraw from representing both defendants and stated that Marlene Helgenberger has contacted the Micronesian Legal Services Corporation (MLSC) to represent her. On September 19, 2014, Joseph Phillip, Esq., entered a Notice of Appearance on behalf of Yalmer Helgenberger. On September 19, 2014, Salomon Saimon, Esq., on behalf of the MLSC entered a Notice of Clarification, which stated that MLSC cannot represent Marlene Helgenberger because they represent Yalmer Helgenberger, in other matters, and MLSC's involvement in this matter would create a conflict of interest for them.

II. DISCUSSION

The withdrawal of counsel from the legal representation of a client is governed under FSM MRPC Rule 1.16 which states in full:

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests

of the client, or if:

- (1) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- (2) the client has used the lawyer's services to perpetrate a crime or fraud;
- (3) a client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;
- (4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (5) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- (6) other good cause for withdrawal exists.

(c) When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

FSM MRPC R. 1.16. "When the court has not been notified on the record at the representation's start that counsel's representation was limited, counsel then must seek the court's permission to withdraw when he believes his representation has come to an end." Atesom v. Kukkun, 11 FSM Intrm. 400, 402 (Chk. 2003). Under subsection 1.16(c), our courts have held that a lawyer must continue representation even if "good cause" for withdrawal exists. FSM v. Jano, 9 FSM Intrm. 470a, 470b (Pon. 2000).¹ Subsection 1.16(d) of this rule is a nonexclusive list of steps that an attorney must take to protect a client's interests before the court will grant the withdrawal. The reasonably practicable efforts to protect a client's interests have been persuasively interpreted by our state courts to "include assisting the clients in obtaining substitute counsel." Hartman v. Chuuk, 12 FSM Intrm. 388, 396 (Chk. S. Ct. Tr. 2004); Dereas v. Eas, 12 FSM Intrm. 629, 631 (Chk. S. Ct. Tr. 2004). This court agrees that this step is usually necessary to withdraw under an FSM MRPC Rule 1.16 motion to withdraw.

Jack files this motion to withdraw under FSM MRPC Rule 1.16(b), and in support of this motion she represents that the defendants have a pending divorce proceeding in the state court, and that her continued representation of the both of them is materially adverse to each client. Jack further argues that the defendants are no longer cooperating or communicating with her nor have they paid any attorney fees. The court also notes that the plaintiff does not oppose the withdrawal of Jack from this matter. While Yalmer Helgenberger now has an attorney on record, it is clear from the MLSC Notice of Clarification that they cannot represent Marlene Helgenberger, and to date, no other attorney has filed a notice of appearance on her behalf. In such circumstances, the court usually requires the attorney to assist the client in finding substitute counsel, or demonstrate why this is not reasonably practical to do so before granting the withdrawal.

¹ In Jano, the court held "trial is too far advanced." 9 FSM Intrm. at 470b. See Helgenberger v. U Mun. Court, 18 FSM Intrm. 274 (Pon. 2012). Similarly, in FSM Dev. Bank v. Tropical Waters Kosrae, Inc., it was held to be too late for counsel to withdraw in a civil case when the court had already scheduled depositions and a hearing. See 18 FSM Intrm. 569, 571 (Kos. 2013).

III. CONCLUSION

THEREFORE, the Renewed Motion to Withdraw as Counsel is hereby GRANTED IN PART for Yalmer Helgenberger only. Jack shall continue to represent Marlene Helgenberger until substitute counsel is found, or otherwise released by this court.

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CHUUK STATE SUPREME COURT APPELLATE DIVISION

SEINAS SIMINA,)	CSSC APPEAL NO. 01-2014
)	
Appellant,)	
)	
vs.)	
)	
CHUUK STATE ELECTION COMMISSION)	
and EXECUTIVE DIRECTOR OF CHUUK)	
STATE ELECTION COMMISSION,)	
)	
Appellees,)	
)	
MATAICHY PWECHAN,)	
)	
Real Party in Interest.)	
_____)	

ORDER DISMISSING APPEAL

Decided: October 23, 2014

BEFORE:

Hon. Jayson Robert, Associate Justice, Presiding
Hon. Brian Dickson, Temporary Justice*
Hon. Bethwell O'Sonis, Temporary Justice**

*Legislative Counsel, Weno, Chuuk; **Directing Attorney, FSM Public Defender, Weno, Chuuk

APPEARANCES:

For the Appellant: Ben Enlet
P.O. Box 1650
Weno, Chuuk FM 96942

For the Appellees: Sabino S. Asor, Esq.
Chuuk Attorney General
Office of the Attorney General
P.O. Box 1050
Weno, Chuuk FM 96942