

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

HENRY SHARP,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 11-1209-RGA-CJB
)	
VERIZON DELAWARE INC.,)	
)	
Defendant.)	

MEMORANDUM ORDER

Pending before the Court in this matter is a Motion to Withdraw as Counsel filed by the law firm of Karpf, Karpf & Cerutti, P.C. and the Law Office of John M. LaRosa (hereinafter "Plaintiff's Counsel"). For the reasons discussed below, the Court will GRANT the Motion to Withdraw.

I. BACKGROUND

Plaintiff's Counsel filed a Complaint on behalf of Plaintiff in this action on December 7, 2011. (D.I. 1) The Complaint alleged that Plaintiff was terminated from the employ of Defendant Verizon Delaware Inc. ("Verizon" or "Defendant") in violation of 42 U.S.C. § 1981 (Count I) and Title VII of the Civil Rights Act of 1964 (Count II). (*Id.* at 5) Specifically, Plaintiff alleges that he was terminated in retaliation for complaining of racial and gender discrimination. (*Id.*; D.I. 24 at 2) On March 27, 2012, this case was referred to the Court by Judge Richard G. Andrews to hear and resolve all pre-trial motions, up to and including the resolution of case-dispositive motions. The Court entered a Scheduling Order on April 16, 2012, which set a discovery completion date of September 28, 2012, a case dispositive motion filing deadline of November 30, 2012, and a date for the completion of expert report submissions of

December 21, 2012. (D.I. 15 at ¶¶ 3, 9) No trial date was scheduled. (*Id.* at ¶ 14)

On July 26, 2012, Plaintiff's Counsel filed the Motion to Withdraw as Counsel, along with a supporting memorandum (collectively, the "Motion to Withdraw" or "Motion"). (D.I. 24, 25) In those filings, Plaintiff's Counsel argued that they should be permitted to withdraw as counsel of record because "their continued representation of Plaintiff would contravene multiple rules of professional conduct and responsibility in this State," and because "[c]ommunications between Plaintiff and his attorneys have deteriorated significantly during the past months, with the most recent event involving Plaintiff hanging-up on Plaintiff's counsel." (D.I. 25 at 1-2) As these filings did not indicate whether there was opposition to the Motion, the Court scheduled a telephonic motion hearing in order to further discuss the Motion with the parties. That telephonic hearing was held on August 30, 2012; Plaintiff's Counsel, Plaintiff and Defendant's Counsel were on the call, along with the Court. In that telephonic hearing, the Court discussed the merits of the Motion with the parties, and it became clear that Plaintiff opposed the Motion. (D.I. 32 at 5:11-12)

In light of this opposition and because the issue in dispute related to the attorney-client relationship, the Court allowed both Plaintiff and Plaintiff's Counsel the ability to file a supplemental letter-brief regarding their respective positions on the Motion in camera, without providing a copy to Defendant's Counsel.¹ (D.I. 32 at 13:21-15:2) An Order was issued on August 31, 2012, to that effect. (D.I. 29) The Court's Order also stayed any remaining deadlines in the Scheduling Order until resolution of the Motion. (*Id.* at 2) Plaintiff's Counsel and

¹ For its part, Defendant's Counsel indicated that it did not object to Plaintiff's Counsel's Motion, nor to the filing of the in camera submissions. (D.I. 32 at 5:2-4, 12:23-13:19)

Plaintiff later filed their letter-briefs, which were docketed on September 11 and 13, 2012, respectively. (D.I. 30, 31)

II. STANDARD OF REVIEW

This Court's Local Rule 83.7, titled "Substitution and Withdrawal of Attorney," states the following:

An attorney may withdraw an appearance for a party without the Court's permission when such withdrawal will leave a member of the Bar of this Court appearing as counsel of record for the party. Otherwise, no appearance shall be withdrawn except by order on a motion duly noticed to each party and served on the party client, at least 14 days before the motion is presented, by registered or certified mail addressed to the client's last known address.²

When a motion to withdraw is filed, and substitute counsel has not entered an appearance on the affected party's behalf, the decision as to whether to allow counsel to withdraw its representation is within the discretion of the Court. *Ohntrup v. Firearms Ctr., Inc.*, 802 F.2d 676, 679 (3d Cir. 1986) (per curiam); *Worldspan, L.P. v. Ultimate Living Grp., LLC*, No. Civ.A. 03-1081-JJF, 2006 WL 1046942, at *1 (D. Del. Apr. 20, 2006).

In *Worldspan, L.P. v. Ultimate Living Grp., LLC*, No. Civ.A. 03-1081-JJF, 2006 WL 1046942 (D. Del. Apr. 20, 2006), this Court set out a list of factors to be considered in ruling upon a motion to withdraw—factors that other courts in this Circuit have also repeatedly utilized in cases where (as here) the affected party is an individual: (1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to the litigants; (3) the delay in the resolution of

² In response to an Order of the Court, Plaintiff's Counsel certified that its Motion was served on Plaintiff pursuant to the requirements of Local Rule 83.7. (D.I. 28) During the August 30, 2012 teleconference, Plaintiff confirmed that he had received the Motion, (D.I. 32 at 4:19-21), and no party has alleged that this portion of Local Rule 83.7's requirements have not been satisfied.

the case which would result from withdrawal; and (4) the effect of withdrawal on the efficient administration of justice. *Id.* at *1; *see also Magargal v. New Jersey*, Civil Action No. 07-3531, 2011 WL 5526077, at *2 (D.N.J. Nov. 14, 2011); *Hargrove v. City of Philadelphia*, No. Civ. A. 93-5760, 1995 WL 550441, at *1 (E.D. Pa. Sept. 15, 1995).³ The *Worldspan* Court also noted that a court may consider the effect of withdrawal on communications between the litigants and the court. *Worldspan*, 2006 WL 1046942, at *1 (citing *Ohntrup*, 802 F.2d at 679).

III. DISCUSSION

As noted above, in a case such as this, courts have typically considered a number of factors in analyzing a motion to withdraw filed by counsel. The Court will, in turn, examine each of these factors below.

A. Reasons Why Withdrawal Is Sought

First, with respect to the reasons why withdrawal is sought, Plaintiff's Counsel cites Delaware Lawyers' Rule of Professional Conduct 1.16(b), which states that an attorney "may

³ In *Ohntrup v. Firearms Ctr., Inc.*, 802 F.2d 676 (3d Cir. 1986) (per curiam), a case involving a motion to withdraw filed by counsel for a corporate party, the United States Court of Appeals for the Third Circuit framed its analysis of the motion by stating that "a law firm is entitled to withdraw once the firm demonstrates to the satisfaction of the district court that its appearance serves no meaningful purpose, particularly insofar as an opposing interest is concerned." *Id.* at 679-680. In *Buschmeier v. G&G Invs., Inc.*, 222 F. App'x 160 (3d Cir. 2007), the Third Circuit later expanded on this statement by noting that *Ohntrup* "states that a law firm can withdraw from representing a corporation even before the corporation retains new counsel" and explaining that the "no meaningful purpose" inquiry set out in *Ohntrup* takes into account the following factors: (1) the burden imposed on the potentially withdrawing counsel if the status quo is maintained; (2) the stage of the proceedings; and (3) prejudice to other parties. *Id.* at 164. As the Third Circuit set out these factors in *Buschmeier* specifically with reference to the representation of a corporate party, the Court will instead utilize the factors set out by this Court in *Worldspan*—a test that has repeatedly been used in cases where the affected party is an individual. It is worth noting, however, that although the *Buschmeier* factors are different than those set out in *Worldspan*, the two sets of factors appear at least to have a similar focus.

withdraw from representing a client if: (1) withdrawal can be accomplished without material adverse effect on the interests of the client; . . . (4) a client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement; . . . or (7) other good cause for withdrawal exists.” (D.I. 25 at 2 (citing Del. Prof. Cond. R. 1.16(b)); *cf. Magargal*, 2011 WL 5526077, at *2 (analyzing New Jersey’s Rules of Professional Conduct in ruling on a motion to withdraw); *Wolgin v. Smith*, No. CIV. A. 94-7471, 1996 WL 482943, at *2 (E.D. Pa. Aug. 21, 1996) (analyzing Pennsylvania’s Rules of Professional Conduct and the Court’s Local Rules in resolving a motion to withdraw). In its filings, Plaintiff’s Counsel states that the attorney-client relationship has “deteriorated significantly during the past months” for various reasons, and that they “cannot continue to represent Plaintiff.” (D.I. 25 at 2)

After having reviewed the Motion, noted the relationship between Plaintiff’s Counsel and Plaintiff during the August 30 telephonic hearing, and analyzed the later submissions of Plaintiff’s Counsel and Plaintiff, the Court is regrettably left with the firm conviction that there has been significant damage to the trust relationship between counsel and represented party, which has left that relationship significantly damaged. Although Plaintiff’s Counsel and Plaintiff disagree over certain facts (such as whether Plaintiff intentionally hung up the phone on Plaintiff’s Counsel during a prior telephone conference between them), (D.I. 25 at 2; D.I. 32 at 11:18-12:11), the tenor of the telephonic hearing and of the submissions, particularly the submissions of Plaintiff’s Counsel, makes clear that this damage amounts to far more than a mere difference of opinion. (*See, e.g.*, D.I. 32 at 6:19-7:15, 8:18-9:5, 12:3-19) And while a difference of opinion between counsel and client is not a compelling reason for withdrawal, *Hargrove*, 1995 WL 550441, at *1, where this Court has determined that the attorney/client relationship has

become irretrievably harmed, it has found that “good cause” existed to grant an attorney’s motion to withdraw. *See Turner v. First Corr. Med.*, Civ. No. 06-095-SLR, 2012 WL 2061712, at *1 (D. Del. June 7, 2012); *Goodlett v. Delaware*, C.A. No. 08-298-LPS, 2012 WL 394698, at *3 (D. Del. Feb. 6, 2012). Other courts in this Circuit have come to similar conclusions. *See Magargal*, 2011 WL 5526077, at *2 (granting motion to withdraw over plaintiff’s objection where it was nonetheless evident to the Court that plaintiff was not satisfied with her current representation and where communications between client and counsel had become “oppressive” to counsel and his staff); *Wolgin*, 1996 WL 482943, at *2-4 (finding good cause to exist to permit withdrawal of counsel over objection of affected party, based on court’s assessment that there has been an irretrievable breakdown in the relationship between counsel and client, evidenced by “hostility and acrimony”).

In reviewing motions to withdraw, our Court has also examined whether to deny such a motion would cause counsel seeking withdrawal “any undue hardship.” *Worldspan*, 2006 WL 1046942, at *1 (denying motion to withdraw in part because doing so would not cause counsel undue hardship, since its client was in default and it was probable that the only future activity in the case would relate to default judgment proceedings and execution, and because counsel also represented another party in the case and did not seek to withdraw from that representation). Here, denial of the Motion could cause some significant hardship on Plaintiff’s Counsel, as it would require them to represent Plaintiff through the remaining (significant) portion of the case, perhaps including trial, despite the existence of clear fissures in the attorney-client relationship discussed above.

For these reasons, this factor weighs in favor of granting the Motion.

B. Prejudice Withdrawal May Cause to the Litigants

With respect to the prejudice that withdrawal may cause to the litigants, Plaintiff's Counsel notes that it filed its Motion on July 26, 2012, in the middle of the fact discovery period. (D.I. 25 at 2) The filing came (1) approximately two months after a Scheduling Order was entered and two months before fact discovery was set to close; (2) over four months from the deadline for filing case-dispositive motions; and (3) approximately five months from the time when expert submissions were scheduled to be completed. (D.I. 15) While the parties have exchanged written discovery and Plaintiff's deposition has been taken, no other depositions have occurred. (D.I. 25 at 1) The Court stayed the discovery deadlines after the submission of the Motion and no trial date has been set. (D.I. 29 at 2) Plaintiff's Counsel argues that because the case schedule was suspended at a relatively early stage, "Plaintiff will not be adversely affected by the withdrawal as Plaintiff's counsel's request includes [allowing for an additional stay of] 60 days [after the Motion is resolved] so that Plaintiff has even more time to retain alternate counsel." (D.I. 25 at 2)

After reviewing the precedent in this area, the Court agrees with Plaintiff's Counsel that the current stage of the case supports granting the Motion. When courts have denied such motions due in part to the state of the case schedule, it has almost uniformly been because the motion to withdraw was made at or near trial or in the post-trial briefing stage. *See, e.g., Carter v. City of Philadelphia*, No. Civ.A. 98-2903, 2000 WL 537380, at *2 (E.D. Pa. Apr. 25, 2000) (denying motion to withdraw due in part to fact that if motion were granted, plaintiff would be forced to try the case *pro se* "five weeks from today"); *Chester v. May Dep't Store*, No. Civ. A. 98-5824, 2000 WL 12896, at *1 (E.D. Pa. Jan. 7, 2000) (denying motion in part because "all

discovery and pretrial proceedings [had] concluded,” the case was on the eve of trial, and trial had already been delayed at the prior request of moving counsel); *Rusinow v. Kamara*, 920 F. Supp. 69, 72 (D.N.J. 1996) (denying motion in part because counsel had litigated the case on behalf of plaintiffs for two years and trial was less than two weeks away); *Hargrove*, 1995 WL 550441, at *1 (denying motion due in part to fact that counsel filing motion had represented plaintiff throughout trial and had filed a post-trial motion on plaintiff’s behalf); *Mervan v. Darrell*, No. Civ. A. 93-4552, 1994 WL 327626, at *1-2 (E.D. Pa. July 8, 1994) (denying motion in case where trial date was scheduled for less than two months from date of denial). In this case, however, the Motion was not filed anywhere near that type of late stage.

For his part, Plaintiff has noted that he has made some (albeit unspecified) attempts to obtain new counsel and has been unable to do so, arguing that he will be prejudiced if required to proceed in the case without being able to obtain new representation. (D.I. 32 at 6:1-5, 11:5-11) The Court is cognizant of the difficulties that a *pro se* plaintiff can face in litigating a civil case; this can be considered a real prejudice that Plaintiff would suffer if the Motion was granted and if he was not thereafter able to obtain substitute counsel. *Carter*, 2000 WL 537380, at *2; *Mervan*, 1994 WL 327626, at *1-2. However, in cases where withdrawal has occurred at an early enough stage in a litigation matter, courts have found that a plaintiff’s rights can be sufficiently protected by crafting a new schedule that allows the affected party a fair opportunity to retain new counsel and “ample time to conduct discovery.” *Magargal*, 2011 WL 5526077, at *2-3 (granting a motion to withdraw filed in 2011 in a case where the complaint was filed in May 2006, in part because the case was “still in its infancy” at the time of the filing of the motion to withdraw, since discovery had been stayed from 2008 until 2011 pending arbitration); *see also Wolgin*,

1996 WL 482943, at *5 (permitting withdrawal and finding that it would not “materially prejudice” affected party, where “there [was] currently no trial scheduled” and any new counsel would be given “ample opportunity to become familiar” with a manageable set of case-related facts). This case is at a sufficiently early stage, relative to trial, that this type of protection could be provided to Plaintiff.

As to any prejudice to Defendant, Defendant’s Counsel has not opposed this Motion. During the telephonic hearing on the Motion, Defendant’s Counsel indicated that so long as the Court stayed the discovery period and allowed for sufficient time to complete discovery after the Motion was resolved, it would not be prejudiced by any decision the Court made on the Motion. (D.I. 32 at 12:23-13:9) In light of this, the Court finds that the grant of the Motion would not prejudice Defendant. *Magargal*, 2011 WL 5526077, at *2 (finding that allowing withdrawal of plaintiff’s counsel would not prejudice defendants, where defendants did not indicate any objection to motion).

In considering the relatively early stage at which the Motion was filed on the one hand, along with the potential prejudice that withdrawal could cause the Plaintiff on the other, the Court finds this factor to be neutral.

C. Delay in the Resolution of the Case That Could Result from Withdrawal

As to the delay in the resolution of the case that could result from withdrawal, the Court does not face a circumstance where the grant of the Motion will directly impact pending litigation events. *Carter*, 2000 WL 537380, at *2 (noting that this factor weighed against the grant of a motion to withdraw when it would delay resolution of a trial scheduled to begin in five weeks). As the schedule in this case has been stayed, the Court would be able to provide

Plaintiff with sufficient time to further attempt to obtain counsel and to complete discovery, in a manner that would not unduly interfere with the ability to schedule further case events or to bring the case to completion. As no trial date has been set in the case, granting the Motion would also not interfere with trial preparations. This factor thus weighs in favor of granting the Motion.

D. Effect of Withdrawal on the Efficient Administration of Justice

With regard to the effect of withdrawal on the efficient administration of justice, as noted above, the grant of the Motion would not have an undue negative impact on the current case schedule. Courts have understandably found that were a plaintiff unable to obtain new counsel and required to litigate his case on his own behalf, the grant of a motion to withdraw could have an impact on the efficient administration of justice. *Carter*, 2000 WL 537380, at *2; *Chester*, 2000 WL 12896, at *1; *Mervan*, 1994 WL 327626, at *1-2. However, courts have tended to make such findings when the request to withdraw came on the eve of trial, as in such cases, the impact that the lack of counsel would have on a significant case event (a trial) was clear and imminent. *Carter*, 2000 WL 537380, at *2; *Chester*, 2000 WL 12896, at *1; *Mervan*, 1994 WL 327626, at *1-2.

In this case, it is difficult to know with certainty how likely it is that Plaintiff will be unable to find substitute counsel or how likely it is that this case will go to trial. It can be assumed that if Plaintiff is unable to obtain new counsel, this will have some negative impact on overall case efficiency. However, based on the current record, the Court cannot assume that this impact will necessarily be greater than in any other civil case where a Plaintiff litigates *pro se*.

For these reasons, this factor weighs against the grant of the Motion, albeit only slightly.

E. Effect of Withdrawal on Communications Between Litigants and the Court

Lastly, as noted above, the *Worldspan* Court also took into account the effect that withdrawal might have on communications between litigants and the Court, noting that courts have been disinclined to permit withdrawal in circumstances where the party affected has been “an intractable litigant” or where the court has faced logistical difficulties in regularly communicating with that party. *Worldspan*, 2006 WL 1046942, at *1 (denying motion to withdraw where defendant resided overseas, had been an “intractable litigant,” and where the court had “significant difficulties in communicating with” defendant); *see also Ohntrup*, 802 F.2d at 679 (upholding denial of motion to withdraw in part because affected party had been an “intractable litigant” and was a Turkish corporation, which had many officers and agents who did not speak or understand English, such that withdrawal would leave the court without the possibility of effective communication with the party). In such cases, the need for counsel to remain in the case can be heightened, so as to ensure that the opposing party and the court are not left in a situation where there is “no possibility of effective communication” with the affected party. *Worldspan*, 2006 WL 1046942, at *1; *see also Ohntrup*, 802 F.2d at 679.

In this case, in contrast, the record demonstrates no such basis for concern about the ability to communicate with Plaintiff in the absence of Plaintiff’s Counsel. Plaintiff has received mailed submissions regarding the Motion, has participated in a telephonic hearing with the Court, and has timely responded to the Court’s Order regarding the filing of post-hearing submissions.

For these reasons, this factor weighs in favor of granting the Motion.

IV. CONCLUSION


In sum, for the reasons outlined above, the balance of the factors set out in *Worldspan*

weigh in favor of granting the Motion. Thus, it is hereby ORDERED that the Motion to Withdraw is GRANTED. It is further ORDERED that the current stay of the discovery period will remain in place until **February 12, 2013**, during which time Plaintiff may continue to seek to obtain new counsel to appear on his behalf. If by the expiration of that period, new counsel has not entered an appearance on behalf of Plaintiff, Plaintiff shall inform the Court in writing as to whether he wishes to proceed with this action by representing himself *pro se*. Regardless of whether Plaintiff proceeds *pro se* or becomes represented, the parties shall meet and confer and submit a new proposed schedule to the Court no later than **February 19, 2013**. *See, e.g., Magargal*, 2011 WL 5526077, at *3.

This Memorandum Order is filed pursuant to 28 U.S.C. § 636(b)(1)(A), Fed. R. Civ. P. 72(a), and D. Del. LR 72.1. The parties may serve and file specific written objections within fourteen (14) days after being served with a copy of this Memorandum Order. Fed. R. Civ. P. 72(a). The failure of a party to object to legal conclusions may result in the loss of the right to review in the district court.

The parties are directed to the Court's Standing Order In Pro Se Matters For Objections Filed Under Fed. R. Civ. P. 72, dated November 16, 2009, a copy of which is available at <http://www.ded.uscourts.gov>.

Dated: December 12, 2012



Christopher J. Burke
UNITED STATES MAGISTRATE
JUDGE