



STARK, U.S. District Judge:

Pending before the Court is Caroline Goldner Cinquanto's motion to withdraw as counsel for Defendant Omar Morales Colon. (D.I. 346) Colon has also requested that this Court find good cause to terminate Ms. Cinquanto's representation and appoint new counsel. (See D.I. 345, 348) Having carefully reviewed the parties' submissions, and for the reasons stated below, the Court will grant Ms. Cinquanto's motion as well as Colon's request for new counsel.

I. BACKGROUND

Ms. Cinquanto began representing Colon in June 2019, when she became the fourth attorney to represent him since his arrest in May 2017.¹ (See D.I. 286) Colon alleges that the conflict with Ms. Cinquanto "dat[es] back to July 2019." (D.I. 348 at 1) The Court first learned of this conflict in March 2020, through a letter sent by Colon directly to the Court. (See D.I. 231) Shortly thereafter, Colon requested that the Court release Ms. Cinquanto and allow him to proceed *pro se*. (D.I. 245) The Court addressed this request on May 7, 2020, explaining that Colon could either proceed *pro se* with Ms. Cinquanto as standby counsel or continue with her as his attorney. (See D.I. 368 at 3) At that time, Colon requested to continue with Ms. Cinquanto. (See *id.*)

¹ After his arrest, Colon was briefly represented by the Federal Public Defender's Office. (See D.I. 286) Shortly thereafter, Colon retained Daniel-Paul Alva. In May 2018, Mr. Alva moved to withdraw as counsel (D.I. 64), and this Court granted his motion (D.I. 67). Mr. Alva stated that, among other reasons, he was requesting withdrawal because Colon had insufficient funds to continue retaining him. (D.I. 64 ¶ 15) The Court then appointed Luis A. Ortiz and, in February 2019, Alan J. Tauber, who, upon Colon's request, joined Mr. Ortiz. (D.I. 125; *see also* D.I. 286) In April 2019, Colon wrote a letter to the Court seeking to dismiss Mr. Ortiz and proceed *pro se* with Mr. Tauber as standby counsel. (D.I. 152-1) Colon asserted a conflict of interest, ineffective assistance of counsel, and a breakdown in communication with Mr. Ortiz. (*Id.*) The Court dismissed Mr. Ortiz as counsel; Mr. Tauber was unable to continue representing Colon for "personal and professional" reasons. (D.I. 165, 166) The Court then appointed Ms. Cinquanto.

After receiving additional letters from Colon expressing concerns with his representation (D.I. 267, 280), the Court again discussed Colon's options with him, on July 23, 2020 (*see* D.I. 285). At that time, Colon stated firmly that he did not want Ms. Cinquanto as his attorney or as standby counsel and also did not want to represent himself; rather, he wanted a new attorney. (*See* D.I. 285 at 8, 12) The Court explained that Colon did not have a right to choose his attorney and that it was less inclined to appoint another one so close to trial – a trial which at that point was scheduled for less than three months later (October 13, 2020). (*See id.* at 11-12)² The Court also “strongly discourage[d]” Colon from proceeding *pro se*; citing, for example, Colon's limited access to discovery while detained and the complexity of the case. (*See id.* at 6-7, 10-11) Colon reaffirmed his refusal to work with Ms. Cinquanto. (*Id.* at 14) She, in turn, expressed concern about effectively representing him given the extent to which the relationship had “deteriorated.” (*Id.* at 30)

² Trial in this matter has been set and rescheduled numerous times. The trial was first set for November 4, 2019. (*See* D.I. 127) In June 2019, soon after taking Colon's case from Mr. Ortiz and Mr. Tauber, Ms. Cinquanto requested a continuance, explaining that she had another upcoming and lengthy trial, and that she was not yet aware of the scope of discovery in Colon's case. (*See* June 27, 2019 Tr. at 4-9) In response, the Court rescheduled the trial for February 3, 2020. (*See* D.I. 179) In December 2019, having familiarized herself with the evidence in the case, Ms. Cinquanto again moved to continue the trial, indicating that she required additional time to prepare. (D.I. 197) In response, the Court rescheduled the trial for a second time for April 13, 2020. (*See* D.I. 205) The trial was rescheduled for a third time for July 6, 2020 in response to another request from Ms. Cinquanto for more time. (*See* D.I. 223) In June 2020, in light of the Covid-19 pandemic, the Court rescheduled the trial for a fourth time for October 13, 2020. (*See* D.I. 264, 265, 269) In August 2020, again because of the pandemic, the Court rescheduled the trial for a fifth time for January 11, 2021. (*See* D.I. 298, 299) For the same reason, in November 2020, the Court rescheduled the trial for a sixth time for April 26, 2021. (*See* D.I. 322, 323) In March 2021, the Court cancelled the April 26, 2021 trial for reasons relating to Colon's health, the ongoing issues regarding representation, and the pandemic. (D.I. 359) At present, trial is not scheduled.

On August 3, 2020, Ms. Cinquanto filed a motion to withdraw as counsel, citing “irreconcilable differences” and a “breakdown in the attorney-client relationship.” (D.I. 289) On August 10, after an *ex parte* discussion with Colon and Ms. Cinquanto, the Court found no good cause to dismiss Ms. Cinquanto. (See D.I. 302 at 17) The Court, however, noted a concern about Colon’s “lack of trust” for Ms. Cinquanto and “what may develop over . . . the time it takes between now and whenever we can safely have a trial.” (*Id.*) The Court also explained to Colon that if he refused to cooperate with Ms. Cinquanto, he may forfeit or waive his right to counsel. (*Id.* at 22, 44) The Court read through the *Faretta* colloquy³ and again “strongly urge[d]” Colon not to represent himself. (*Id.* at 39, 26-44) Colon then affirmed that he did not want to proceed *pro se*, that he would continue to be represented by Ms. Cinquanto, and that he understood the risk of losing his right to counsel by not cooperating. (*Id.* at 44)

In November 2020, Colon noted that the “trust relationship” with Ms. Cinquanto was “deteriorating” and requested a hearing on the issue. (D.I. 369 at 18) On January 14, 2021, Colon was again heard. (See D.I. 370) Around two weeks later, Ms. Cinquanto alerted the Court that Colon had filed a disciplinary complaint against her. (See D.I. 373 at 2) This development prompted Ms. Cinquanto to again move to withdraw. (See *id.*; D.I. 346) On February 4, the Court ordered Colon to submit an *ex parte* letter setting forth his good cause reasons for replacing Ms. Cinquanto and, in turn, ordered a response from Ms. Cinquanto. (D.I. 344) Colon subsequently submitted two *ex parte* letters to the Court (D.I. 345, 348), to which Ms. Cinquanto responded with a letter (D.I. 361) and exhibits (D.I. 354), all of which were also filed *ex parte*.⁴

³ See *Faretta v. California*, 422 U.S. 806 (1975).

⁴ Although the Court has determined that it need not issue this Memorandum Opinion *ex parte*, as it does not disclose privileged communications or information the disclosure of which will harm Colon and counsel’s ability to effectively represent him, the Court has also decided there is

Colon alleges two bases for good cause: a complete breakdown in communication and an irreconcilable conflict. (D.I. 348 at 2-6) Among other things, Colon: (i) asserts that Ms. Cinquanto failed to provide him with case updates and send him certain discovery; (ii) takes issue with how Ms. Cinquanto has conducted his defense, including her allegedly improper filing of and failure to withdraw suppression motions; and (iii) references meetings during which their communications became “hostile” and “volatile,” requiring assistance from third parties. (*Id.*)

II. LEGAL STANDARDS

The Sixth Amendment guarantees an effective advocate for each criminal defendant; it does not, however, guarantee a meaningful relationship between defendants and counsel. *See Caldwell v. Phelps*, 945 F. Supp. 2d 520, 537 (D. Del. 2013) (citing *Wheat v. United States*, 486 U.S. 153, 159 (1988); *Morris v. Slappy*, 461 U.S. 1, 13-14 (1983)). Further, a defendant’s right to counsel of one’s choice “does not extend to defendants who require counsel to be appointed for them.” *Id.* (quoting *United States v. Gonzalez-Lopez*, 548 U.S. 140, 151 (2006)). If an indigent defendant requests new counsel “on the eve of trial,” he must show good cause to justify a continuance of the trial to allow him to obtain substitute counsel. *United States v. Welty*, 674 F.2d 185, 187 (3d Cir. 1982).

Good cause for substitution of counsel exists where there is a “conflict of interest, a complete breakdown of communication, or an irreconcilable conflict with the attorney.” *United States v. Goldberg*, 67 F.3d 1092, 1098 (3d Cir. 1995). A disagreement between the defendant and defense counsel over legal strategy does not constitute good cause, nor does a defendant’s unilateral decision not to cooperate with court appointed counsel. *See Caldwell*, 945 F. Supp. at

no need to share the *ex parte* filings with the government. (*See generally* D.I. 344) (“Upon reviewing the letters, the Court will decide if any further hearing is warranted and if it will share any parts of the letters with the government.”)

537. Further, a defendant's mere dissatisfaction with counsel does not warrant substitution. *See United States v. Moses*, 58 F. App'x 549, 555 (3d Cir. 2003).

After performing a proper inquiry,⁵ if the court determines that good cause does *not* exist, then it must "inform the defendant that he can either proceed with current counsel or represent himself." *United States v. Peppers*, 302 F.3d 120, 132 (3d Cir. 2002). At this stage, the court must ensure that "any decision by the defendant to represent himself is intelligently and competently made," since such a decision involves a waiver of the defendant's Sixth Amendment right to counsel. *Welty*, 674 F.2d at 187.

III. DISCUSSION

First, the Court will grant Ms. Cinquanto's motion to withdraw. Ms. Cinquanto alleges that Colon has "repeatedly questioned" her "professionalism, the quality of the work she has performed on [his] behalf," and her "overall diligence and commitment to defending his case." (D.I. 346 at 1-2) In light of these accusations and the disciplinary complaint filed against her, Ms. Cinquanto asserts that the attorney-client relationship has irreparably deteriorated with respect to both defense strategy and the personal relationship. (*Id.*; *see also* D.I. 361 at 8) The Court finds that "good cause for withdrawal exists"⁶ under Rule 1.16 of the Rules of Professional

⁵ Although the court must engage in "at least some inquiry" as to the reasons for a defendant's request to substitute counsel, it is well-settled in the Third Circuit that a district court need not engage in a formal inquiry if "the defendant has been given an opportunity to provide the court with the reason for his dissatisfaction with counsel." *Ducote v. Phelps*, 2010 WL 3860995, at *9 (D. Del. Sept. 28, 2010) (citing *United States v. Leveto*, 540 F.3d 200, 208 (3d Cir. 2008); *Welty*, 674 F.2d at 190); *see also United States v. White*, 320 F. App'x 120, 123 (3d Cir. 2008) ("Therefore, the District Court properly ruled without a hearing because it already knew White's purported reasons to disqualify counsel which were set forth in his motion.").

⁶ This good cause for withdrawal inquiry is distinct from the "good cause" inquiry for appointing new counsel under *Welty*, which is addressed below.

Conduct and that, under the circumstances (which include, unfortunately, the current lack of a trial date), withdrawal can be accomplished without adverse effect on Colon. (*See* D.I. 346 at 2)

Second, the Court considers whether good cause exists to appoint new counsel. Although the Court will not address each of Colon's allegations individually in this opinion, it has carefully considered all of the accusations in both of his letters, as well as Ms. Cinquanto's thorough responses (and the other materials provided by Colon and counsel). (*See, e.g.*, D.I. 345, 348, 354, 361)

The record created by the filings, as well as the Court's own observation, clearly demonstrates that Ms. Cinquanto has been diligent and professional throughout her representation. Colon's complaints do not withstand scrutiny. For instance, Ms. Cinquanto kept Colon adequately apprised of case developments and conferred with him to an appropriate degree considering the challenging and largely unprecedented circumstances that have prevailed during much of her representation, due to the pandemic. Ms. Cinquanto was prevented from providing Colon with certain case updates after FDC Philadelphia suspended visitation because of Covid-19. (D.I. 361 at 5) After the FDC re-opened, she provided case updates, returned discovery Colon had given her, and delivered additional discovery. (*See id.*) Similarly, in response to Colon's assertions that his discovery was incomplete, Ms. Cinquanto explains that she "spent numerous hours scouring the discovery database" to locate allegedly missing items. (*Id.* at 10)

Colon's other criticisms equally lack merit. For example, Ms. Cinquanto referred to "newly discovered evidence" that the Court found was not "new" (in the motion for reconsideration filed on February 10, 2020), but this error does not establish good cause for appointment of new counsel. (*See* D.I. 258 at 7; *see also* D.I. 216) Nor do Colon's

disagreements with Ms. Cinquanto about legal strategy. Colon alleges that he opposed two motions filed by his previous attorney and sent Ms. Cinquanto an email stating as much, yet she did not withdraw the motions. (D.I. 348 at 3) In addition to the fact that this type of decision about legal strategy rests with the attorney and will not be a basis for a finding of good cause in this context, *see Caldwell*, 945 F. Supp. at 537, there is also Ms. Cinquanto's explanation that she had met with Colon three times after receiving his email and that he made no objections on the day of the hearing (*see* D.I. 361 at 6). The same reasoning applies to Colon's allegations regarding Ms. Cinquanto's filing of the reconsideration motion in lieu of following the seven steps outlined by Colon that, in his view, would have yielded a favorable result. (*See* D.I. 348 at 4)

Notwithstanding these conclusions about Ms. Cinquanto's performance, the Court finds good cause to appoint new counsel on another basis: the conflict between Colon and Ms. Cinquanto is plainly irreconcilable. It has endured for nearly two years, has been the subject of numerous and sometimes lengthy hearings before this Court, and it has led to disciplinary proceedings outside of this Court. Colon has expressed an absence of trust in his counsel that is unlikely to ever return. *See United States v. Totoro*, 2016 WL 8716251, at *2 (E.D. Pa. Sept. 9, 2016) (finding good cause where request for new counsel stemmed from defendant's distrust). Communications between attorney and client have been "hostile" and "volatile." (D.I. 348 at 2) Additionally, as of the filing of the disciplinary complaint, Ms. Cinquanto has expressed a reciprocal unwillingness to work with Colon.⁷

⁷ For a contrasting situation, *see Ducote*, 2010 WL 3860995, at *9 & n.7 (finding no good cause where counsel remained willing to represent defendant after he filed disciplinary complaint, noting specifically that "defense counsel's willingness to continue to represent [the defendant] undermines any assertion of an irreconcilable breakdown of communication").

This case can be distinguished from others in which the defendant alleged that he and his counsel were simply “bumping heads,” *Bultron v. Phelps*, 2010 WL 1336158, at *5 (D. Del. Mar. 31, 2010), or that his counsel “exhibited a lack of enthusiasm,” *Gov’t of Virgin Islands v. James*, 934 F.2d 468, 471 (3d Cir. 1991). The record here suggests more than just “mere dissatisfaction” with counsel. *Moses*, 58 F. App’x at 555. Specifically, the duration of the conflict, the many unsuccessful attempts to reconcile it, and the irreparable deterioration of trust lead the Court to conclude that good cause exists to appoint new counsel.

Additionally, and importantly, this is not a case in which a defendant is requesting a continuance on the eve of trial or during the trial itself. *See, e.g., Welty*, 674 F.2d at 187 (request made on third day of trial, after most witnesses had been called); *see also Moses*, 58 F. App’x at 552 (request for new counsel made day before jury selection scheduled to begin). As of this writing, no trial date is set (although trial will be scheduled promptly after appointment of, and consultation by the Court with, new counsel).

Nonetheless, the Court reaches its conclusion reluctantly. Colon is currently represented by competent and experienced counsel. *See Totoro*, 2016 WL 8716251, at *3 (expressing “hesitation” and “skeptic[ism]” of defendant’s distrust of his lawyer but finding good cause nonetheless because defendant faced “very serious charges” and was “adamant” he could “no longer work with his lawyer”). Further, Colon lodged similar accusations against his former attorney, Mr. Ortiz, whose dismissal, along with the disputes concerning Ms. Cinquanto, have delayed this trial. The Court intends to schedule trial to be held promptly, after consultation with the soon-to-be-appointed new counsel and the government, and will be disinclined to grant any further continuances, especially if there are indications such a request is made in bad faith, for purposes of delay, or to subvert judicial proceedings. *See United States v. Romano*, 849 F.2d

812, 819 (3d Cir. 1988); *see also United States v. McFadden*, 630 F.2d 963, 972 (3d Cir. 1980) (defendant is “not entitled to employ complaints against counsel as a dilatory tactic in order to postpone trial”); *United States v. Davis*, 604 F.2d 474, 481 (7th Cir. 1979) (defendant’s discharge of three successive attorneys gives rise to reasonable inference of dilatory purpose). Accordingly, the Court strongly urges Colon to work cooperatively with his new counsel.⁸

IV. CONCLUSION

For the reasons above, the Court will grant Ms. Cinquanto’s motion to withdraw and Colon’s request for new counsel. An appropriate Order follows.

⁸ While the government has not been privy to the details of the issues Colon has raised, and has not had access to most of the filings or discussions that are the subject of this Memorandum Opinion, the government is, of course, aware of the fact that issues relating to representation have arisen and must be resolved by the Court before this case can move forward. (*See, e.g.*, D.I. 372) Given these realities, the Court understands the government does not have a formal position on whether Colon has demonstrated the necessary good cause to be appointed new counsel, but further understands the government supports the Court exercising whatever discretion it may have to appoint new counsel. (*See generally id.* at 9-11) Further, the government has not expressed any opposition to Ms. Cinquanto’s motion to withdraw.