

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JANET JENKINS, <i>et al.</i> ,)	
Plaintiffs)	
)	
v.)	Docket No. 2:12-cv-184
)	
KENNETH L. MILLER, <i>et al.</i> ,)	
Defendants)	

MOTION OF GRAVEL & SHEA PC FOR LEAVE TO WITHDRAW
AS COUNSEL, WITH INCORPORATED MEMORANDUM OF LAW

Gravel & Shea PC moves pursuant to District of Vermont Local Rule 11(d) for leave to withdraw as counsel for Defendants Philip Zodhiates, Response Unlimited, Inc., and Victoria Hyden (the “Zodhiates Defendants”)¹ for the reasons set forth below in the incorporated memorandum of law.

Memorandum of Law

Vermont Rule of Professional Conduct 1.16 (b)(7) provides that a lawyer may withdraw from representation of a client for good cause. That circumstance has arisen in light of Philip Zodhiates’ filing of a petition for post-conviction relief pursuant to 18 U.S.C. § 2255 (the “2255 Petition”) in the Western District of New York, the jurisdiction in which Philip Zodhiates was tried and convicted in 2016 for violations of the International Parental Kidnapping Act, 12 U.S.C. § 1204 (“IPKA”). Mr. Zodhiates has asserted that he was convicted because his

¹ Mr. Zodhiates is, or was, the principal of Response Unlimited, Inc., and is the father of Victoria Hyden.

attorneys, including Gravel & Shea PC, provided ineffective assistance of counsel as to an affirmative defense.

The pleadings which have been filed in support of the 2255 Petition make clear that there are irreconcilable differences between the Zodhiates Defendants and Gravel & Shea PC. In light of the irreconcilable differences, Gravel & Shea PC must move to withdraw as counsel for the Zodhiates Defendants² in *Jenkins v. Miller, et al. See Catamount Radiology, P.C. v. Bailey*, 2015 U.S. Dist. LEXIS 107287, *3 (D. Vt., Aug. 12, 2015) (Murtha, J.) (irreconcilable differences constitute sufficient grounds for a withdrawal of counsel); *see also Long v. Parry*, 2015 U.S. Dist. LEXIS 191315, *4 (D. Vt., July 7, 2015) (Sessions, J.) (allowing withdrawal where counsel cited both break-down of attorney-client relationship and potential ethical concerns under the Vermont Rules of Professional Conduct).³

This court's recent extension of the discovery schedule until March 2, 2020 (Doc. 425) gives time for the Zodhiates Defendants to obtain new counsel without prejudice to any party, including the Zodhiates Defendants. Gravel & Shea PC will facilitate a smooth transition of the file to new counsel and will assist new counsel as needed. New counsel may seek a further extension. Given the history of the proceedings in this case, it cannot be said that any party would be prejudiced if the Court grants additional time for completion of discovery.

² Given the relationship between Mr. Zodhiates and the other two represented defendants, it is not feasible for counsel to continue to represent Ms. Hyden and Response Unlimited. The conflict that infects Gravel & Shea's representation of Mr. Zodhiates also infects the firm's representation of Ms. Hyden and Mr. Zodhiates's company, Response Unlimited, and cannot be reconciled as to those clients for the same reasons that the conflict with Mr. Zodhiates is irreconcilable.

³ Counsel is respectful of the interests of the Zodhiates Defendants, and in presenting this motion exercises caution not to be more explicit with regard to the details of the differences presented by the 2255 Petition. Counsel would be more disclosing where any more explicit description was for the Court's consideration only and in which Mr. Zodhiates, who is incarcerated presently, could participate by phone.

Conclusion

Because of an irreconcilable conflict between Gravel & Shea, on the one hand, and the Zodiates Defendants, on the other, Gravel & Shea cannot continue as counsel for the Zodiates Defendants. Consequently, this Court should permit Gravel & Shea PC to withdraw as counsel to the Zodiates Defendants, give the Zodiates Defendants appropriate time to retain substitute counsel, and make such adjustments to the schedule in this case as needed and to provide any additional relief the Court deems appropriate to protect the interests of the Zodiates Defendants.

Dated: Burlington, Vermont
December 10, 2019

/s/ Robert B. Hemley
Robert B. Hemley, Esq.
Gravel & Shea PC
76 St. Paul Street, 7th Floor, P.O. Box 369
Burlington, VT 05402-0369
(802) 658-0220
rhemley@gravelshea.com

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CERTIFICATE OF SERVICE

I, Robert B. Hemley, Esq., attorney for Defendants Philip Zodhiates, Victoria Hyden and Response Unlimited, Inc., certify that, on December 10, 2019, I caused the Motion of Gravel & Shea PC for Leave to Withdraw as Counsel, With Incorporated Memorandum of Law to be served through the CM/ECF system and by e-mail and in some instances by first-class mail, on the following individuals:

Via E-Mail

David C. Dinielli, Esq.
Diego A. Soto, Esq.
Southern Poverty Law Center
david.dinielli@splcenter.org;
diego.soto@splcenter.org

Frank H. Langrock, Esq.
Langrock Sperry & Wool, LLP
flangrock@langrock.com

J. Tyler Clemons, Esq.
Southern Poverty Law Center
tyler.clemons@splcenter.org

Sarah Star, Esq.
Sarah Star, PL
srs@sarahstarlaw.com

Brooks G. McArthur, Esq.
Jarvis, McArthur & Williams, LLC
bmcarthur@jarvismcarthur.com

Michael J. Tierney, Esq.
Wadleigh, Starr & Peters
mtierney@wadleighlaw.com

Adam S. Hochschild, Esq.
Hochschild Law Firm, LLC
adam@hochschildlaw.com

Norman C. Smith, Esq.
Norman C. Smith, PC
nc.smith@myfairpoint.net

Anthony R. Duprey , Esq.
Neuse, Duprey & Putnam, P.C.
anthony@ndp-law.com

Daniel J. Schmid, Esq.
Horatio G. Mihet, Esq.
Roger K. Gannam , Esq.
Liberty Counsel
dschmid@lc.org; hmihet@lc.org;
rgannam@LC.org

Via First-Class Mail

Anthony R. Duprey, Esq.
Neuse, Duprey & Putnam, P.C.
1 Cross Street
Middlebury, VT 05753-1445

Daniel J. Schmid, Esq.
Horatio G. Mihet, Esq.
Roger K. Gannam , Esq.
Liberty Counsel
P.O. Box 540774
Orlando, FL 32854

Dated: Burlington, Vermont
December 10, 2019

Robert B. Hemley

Robert B. Hemley, Esq.
Gravel & Shea PC
76 St. Paul Street, 7th Floor, P.O. Box 369
Burlington, VT 05402-0369
(802) 658-0220
rhemley@gravelshoa.com
For Defendants Philip Zodiates, Victoria
Hyden and Response Unlimited, Inc.