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2-21-2019

# Nancy Johnson et al., ORDER DENYING MOTION TO WITHDRAW AS COUNSEL

Kathy Lee Ellerbee

*Fulton County Superior Court, Judge*

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**IN THE SUPERIOR COURT OF FULTON COUNTY  
BUSINESS CASE DIVISION  
STATE OF GEORGIA**

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NANCY JOHNSON, Individually, and  
as Executor of the Estate of Dennis L.  
Johnson, and as Beneficiary of the  
Nancy Johnson Family Trust,  
SHANNON JOHNSON, as Beneficiary  
of the Dennis Johnson Family Trust,  
THE DENNIS AND NANCY  
JOHNSON CHARITABLE  
REMAINDER UNITRUST, THE  
DENNIS L. AND NANCY JOHNSON  
FAMILY FOUNDATION, INC., and  
DNJ INVESTMENTS, LLC,

Plaintiffs,

v.

KEVIN TAYLOR, Individually, and as  
Trustee of the Nancy Johnson Family  
Trust, and Trustee of the Dennis  
Johnson Family Trust, and NICOLE  
TAYLOR, Individually, and as Trustee  
of the Nancy Johnson Family Trust,  
and Trustee of the Dennis Johnson  
Family Trust,

Defendants.

CIVIL ACTION NO.  
2017CV296139

Business Case Div. 3

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**ORDER DENYING MOTION TO WITHDRAW AS COUNSEL**

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The above styled action is before the Court on Defense counsel's Motion to Withdraw as Counsel ("Motion to Withdraw"), wherein counsel request leave to

withdraw as attorneys for Defendants under Uniform Superior Court Rule 4.3.

Rule 4.3 provides in relevant part:

(1) An attorney appearing of record in any matter pending in any superior court, who wishes to withdraw as counsel for any party, shall submit a written request to an appropriate judge of the court for an order permitting such withdrawal. **The request shall state that the attorney has given written notice to the affected client setting forth the attorney's intent to withdraw, that 10 days have expired since notice, and there has been no objection, or that withdrawal is with the client's consent.** The request will be granted **unless in the judge's discretion to do so would delay the trial or otherwise interrupt the orderly operation of the court or be manifestly unfair to the client.**

(2) The attorney requesting an order permitting withdrawal shall give notice to opposing counsel and shall file with the clerk and serve upon the client, personally or at that client's last known mailing and electronic addresses, **the notice which shall contain at least the following information:**

- (A) the attorney wishes to withdraw;
- (B) the court retains jurisdiction of the action;
- (C) the client has the burden of keeping the court informed where notices, pleadings or other papers may be served;
- (D) **the client has the obligation** to prepare for trial or hire new counsel to prepare for trial, when the trial date has been scheduled and **to conduct and respond to discovery or motions in the case;**
- (E) if the client fails or refuses to meet these burdens, the client may suffer adverse consequences, including, in criminal cases, bond forfeiture and arrest;
- (F) dates of any scheduled proceedings, including trial, and that holding of such **proceedings will not be affected by the withdrawal of counsel;**
- (G) **service of notices may be made upon the client at the client's last known mailing address;**
- (H) if the client is a corporation, that a corporation may only be represented in court by an attorney, that an attorney must sign all pleadings submitted to the court, and that a corporate officer may not

represent the corporation in court unless that officer is also an attorney licensed to practice law in the state of Georgia or is otherwise allowed by law; and

(I) **unless the withdrawal is with the client's consent**, the client's right to object within 10 days of the date of the notice, **and provide with specificity when the 10th day will occur.**

The attorney requesting to withdraw shall prepare a written notification certificate stating that the notification requirements have been met, the manner by which notification was given to the client and **the client's last known mailing and electronic addresses** and telephone number. **The notification certificate shall be filed with the court and a copy mailed to the client and all other parties.** Additionally, the attorney seeking withdrawal shall provide a copy to the client by the most expedient means available due to the strict 10-day time restraint, i.e., e-mail, hand delivery, or overnight mail. After the entry of an order permitting withdrawal, the client shall be notified by the withdrawing attorney of the effective date of the withdrawal; thereafter all notices or other papers shall be served on the party directly by mail at the last known mailing address of the party until new counsel enters an appearance.

(3) When an attorney has already filed an entry of appearance **and the client wishes to substitute counsel**, it will not be necessary for the former attorney to comply with rule 4.3 (1) and (2). Instead, the new attorney may file with the clerk of court a notice of substitution of counsel signed by the party and the new attorney...**The substitution shall not delay any proceeding or hearing in the case.**

(Emphasis added).

Here, the Motion to Withdraw is deficient for several reasons. It does not contain all of the information required by Rule 4.3 including, *inter alia*: **“the client has the obligation** to prepare for trial or hire new counsel to prepare for trial, when the trial date has been scheduled and **to conduct and respond to discovery or motions in the case”** (Rule 4.3(2)(D)); “dates of any scheduled proceedings,

including trial, and that holding of such **proceedings will not be affected by the withdrawal of counsel** (Rule 4.3(2)(F)); “service of notices may be made upon the client at the client's last known mailing address” (Rule 4.3(2)(G)); “**unless the withdrawal is with the client's consent**, the client's right to object within 10 days of the date of the notice, **and provide with specificity when the 10th day will occur**” (Rule 4.3(2)(I)); “the client’s last known... electronic addresses” (Rule 4.3(2)).

Further, Rule 4.3 requires that any motion/notice seeking to withdraw (which “shall contain at least...the information” set forth in paragraph (2)), shall be served upon the client. However, the Certificate of Service filed with the Motion to Withdraw does not indicate that it was served upon Defendants. Exhibit A to the motion (titled “Notification Certification”) states:

The Meyring Law Firm has given such notification as required by The Uniform Rules for the Superior Court, Rule 4.3. Such notice was in the form of an e-mail and letter, sent on February 19, 2019, stating our intention to withdraw. Within this email and letter, the Meyring Law Firm met the notification requirements as required by Superior Court Rule 4.3.

However, insofar as the “e-mail and letter” sent to Defendants was not submitted to the Court, there is no way for the Court to assess whether the information required under Rule 4.3 has otherwise been conveyed to Defendants.

Moreover, the Court finds that granting the Motion to Withdraw “would delay the trial[,],...otherwise interrupt the orderly operation of the court[, and

would] be manifestly unfair to [all parties]” (Rule. 4.3(1)). Notably, current counsel is the second set of attorneys Defendants have had during the course of this case. Prior counsel was allowed to withdraw on June 19, 2018. That withdrawal and the subsequent appearance of current counsel complicated and delayed the exchange and administration of discovery considerably. Particularly in light of the extensive discovery hearing held on February 14, 2019 and the findings, rulings, and instructions of the Court at that proceeding, to allow current counsel to withdraw while those numerous discovery issues remain pending would further interrupt the adjudication of this case to the detriment of the parties.

To the extent Defendants wish to substitute new counsel in the place of current counsel, Rule 4.3 provides the procedure to do so. However, any such “substitution shall not delay any proceeding or hearing in the case.” Rule 4.3(3). Defendants and substituted counsel will be required to promptly address and comply with the Court’s rulings regarding the pending discovery issues as discussed at the February 14, 2019 hearing and as set forth in the Order on Discovery Dispute being entered contemporaneously herewith.

Given all of the above, the Motion to Withdraw is hereby DENIED.

SO ORDERED this 21<sup>st</sup> day of February, 2019.

  
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HONORABLE KELLY LEE ELLERBE  
Superior Court of Fulton County  
Business Case Division



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