

ORDERED.



Dated: December 21, 2010

Eileen W. Hollowell

EILEEN W. HOLLOWELL
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re)	Chapter 13
)	
)	No. 4-09-bk-05569-EWH
PETER TESCIONE, JR.,)	
)	MEMORANDUM OVERRULING DEBTOR'S
)	OBJECTION TO ORDER GRANTING
)	ATTORNEY'S MOTION TO WITHDRAW
<u>Debtor.</u>)	

Peter Tescione ("Debtor") objects ("Objection") to the court's November 17, 2010 order permitting his counsel ("Counsel") to withdraw from representation. For the reasons set forth below, the Objection is overruled.

I. FACTS AND PROCEDURAL HISTORY

On March 25, 2009, a Chapter 13 petition was filed by the Debtor. From that date until November 17, 2010, Debtor was represented by Counsel. The Disclosure of Compensation of Attorney for Debtor ("Disclosure") filed on April 9, 2009 reveals that Counsel was paid the sum of \$1,226.00 pre-petition with a balance due of \$3,274.00. The Disclosure's scope of representation excludes from representation adversary or contested proceedings. Also, on April 9, 2009, a Motion and Application for Allowance of Attorney's Fees as an Administrative Expense was filed seeking an order which would provide for payment of the balance of Counsel's legal fees of \$3,274 upon the

1 confirmation, dismissal or conversion of the Debtor's bankruptcy case. As of the date of
2 this order, the Debtor's Chapter 13 case is still pending, but no plan has been
3 confirmed.

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5 Notwithstanding the exclusions contained in the Disclosure, Counsel represented
6 the Debtor in multiple contested matters, including several lift stay proceedings,
7 contested confirmation hearings, and a claim objection. After the court granted relief
8 from the stay to a judgment creditor, the Debtor, in pro se, filed a motion for extension of
9 time to file a notice of appeal ("Pro Se Motion"). The Debtor's counsel then filed a
10 motion to withdraw ("Motion to Withdraw") on the grounds that communication had
11 broken down with her client and that the Debtor would not follow her legal advice. The
12 court set both the Pro Se Motion and the Motion to Withdraw for an expedited hearing
13 ("Expedited Hearing"). At that hearing, the court orally granted the Motion to Withdraw.
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15 A written order authorizing counsel's withdrawal was entered on November 17, 2010.

16 On November 18, 2010, Debtor filed the Objection, which the court treats as
17 motion for new trial or to alter or amend its order pursuant to Rule 9023.¹
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19 **II. DISCUSSION**

20 The Objection asserts that Debtor did follow Counsel's advice, that the filing of
21 the Motion to Withdraw violated the Arizona Rules of Professional Conduct, that
22 Debtor's contract with Counsel required Counsel to represent him through the
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26 ¹ Unless otherwise noted, all citations to a Rule are citations to the Federal Rules of
27 Bankruptcy Procedure.

1 conclusions of any appeals, that his medical condition² prohibits Counsel from
2 withdrawing, and finally that Counsel is required to obtain alternative counsel to
3 represent him on any appeal under the terms of his contract with Counsel and at no
4 additional cost to Debtor.
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6 Local Rule 2083-8 authorizes withdrawal of counsel in a Chapter 13 case by
7 court order. Whether to permit counsel to withdraw is a matter of discretion with the trial
8 court. United States v. Carter, 560 F.3d 1107, 1113 (9th Cir. 2009). Numerous cases
9 have held that a breakdown in the attorney-client relationship is grounds for permitting
10 counsel to withdraw. See, e.g., S.E.C. v. Souza, 2010 WL 2231822, at *1 (E.D. Cal.
11 Jun. 10, 2010); Moss Landing Comm. Park LLC v. Kaiser Aluminum Corp., 2009
12 WL 764873, at *1-2 (N.D. Cal. 2009). In this case, the breakdown in the attorney-client
13 relationship was evidenced by Debtor's pro se filing of a pleading requesting an
14 extension of time to file a notice of appeal. The court finds that the Objection and its
15 attachments provide further evidence of a breakdown in the attorney-client relationship.
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17 Debtor's assertions that Counsel has violated the Arizona Rules of Professional
18 Conduct do not change the result. Indeed, it is further evidence of the breakdown in the
19 attorney-client relationship. However, this court is not the proper venue for deciding
20 Debtor's claims of Counsel's misconduct. As the court explained at the Expedited
21 Hearing, the Debtor is free to pursue such claims with the State Bar of Arizona, but this
22 court is not the proper forum for the adjudication of such claims.
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27 ² Debtor asserts that he has early onset Alzheimer's.
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