

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

June 20, 2024 at 1:30 p.m.

1. [24-20145-E-7](#)
[EJS-1](#)

DONALD DUPONT
Eric Schwab

**MOTION BY ERIC JOHN SCHWAB TO
WITHDRAW AS ATTORNEY O.S.T.
6-14-24 [108]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, and Office of the United States Trustee on June 14, 2024. By the court's calculation, 6 days' notice was provided. The court set the hearing for June 20, 2024. Dckt. 112.

The court has set this matter for hearing on very short notice in light of the subject matter to allow Debtor and counsel to be promptly before the court. The court does not do this to "rush" the Debtor into a decision, but to get the Debtor and counsel before the court to see how this should proceed to a determination being made by the court.

The Motion to Withdraw as Attorney was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing

The Motion to Withdraw as Attorney is xxxxxxx.
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Eric John Schwab (“Movant,” “Counsel”), counsel of record for Donald Fred DuPont, Jr. (“Debtor”), filed a Motion to Withdraw as Attorney as Debtor’s counsel in the bankruptcy case. Movant states, as summarized by the court the following:

- A. Debtor is actively working to prosecute this case personally, and not with the assistance of counsel.
- B. Debtor indicates that he does not believe that the assistance of counsel is necessary, and that Debtor can address these bankruptcy matters on his own. Debtor questions whether his resources would be effectively spent for such counsel in light of Debtor’s ability to move this matter forward.
- C. There exists between counsel and Debtor about how this Bankruptcy Case should be prosecuted by Debtor. This results in the situation where an attorney’s ability to serve the client is significantly reduced.

APPLICABLE LAW

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client’s interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client’s case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California (“Rules of Professional Conduct”). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF’L CONDUCT 3- 700(A)(2).

The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act or (3) where Counsel's mental or physical condition renders it unreasonably difficult to carry out the employment effectively. CAL. R. PROF'L CONDUCT 3-700(B).

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

(d) The client by other conduct renders it unreasonably difficult for the member to carry out the employment effectively.

CAL. R. PROF'L CONDUCT 1.16(b)(4).

DISCUSSION

Although Movant does not discuss any prejudice that withdrawal as a counsel will or will not cause or harm it might or might not have on administration of justice, Movant has made it clear Debtor does not wish to retain Counsel during this case. Debtor has expressed similar sentiments to the court in the past while Debtor was appearing in *pro se*.

At the hearing, **XXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Withdraw as Attorney filed by Eric John Schwab ("Movant," "Counsel") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Withdraw as Attorney is **XXXXXXX**