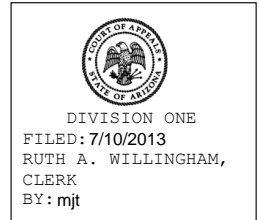


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

MEAD & ASSOCIATES, P.C.;	)	No. 1 CA-SA 13-0159
TERRANCE C. MEAD and LISA	)	
MISNER-SKOZEN,	)	
	)	DEPARTMENT D
Petitioners,	)	
	)	
v.	)	Maricopa County
	)	Superior Court
THE HONORABLE GERALD J. PORTER,	)	No. FC2008-005576
Judge of the SUPERIOR COURT OF	)	
THE STATE OF ARIZONA, in and for	)	
the County of MARICOPA,	)	<b>DECISION ORDER</b>
	)	
Respondent Judge,	)	
	)	
MICHELLE MCFARLAND and ANDREW	)	
HINZ,	)	
	)	
Real Parties in Interest.	)	
	)	

The court, Presiding Judge Diane M. Johnsen and Judges Randall M. Howe and Lawrence F. Winthrop participating, has considered the special action petition of the Petitioners, Mead & Associates, P.C., Terrance C. Mead, and Lisa K. Misner-Skozen. Petitioners are attorneys who seek relief from the trial court's orders denying their motion to withdraw from representation of their client, Michelle McFarland, the Real Party in Interest. Petitioners have also requested expedited consideration of their petition. McFarland has not responded to the petition or the request for expedited consideration. For the following reasons, we grant

Petitioners' motion for expedited consideration, accept jurisdiction of the special action petition, and grant relief.

We accept jurisdiction of this special action because the trial court's minute entry order denying Petitioners' motion to withdraw is not appealable; consequently, Petitioners have no equally plain, speedy, or adequate remedy by appeal. *See Riley, Hoggatt & Suagee, P.C. v. Riley*, 165 Ariz. 138, 138, 796 P.2d 940, 940 (App. 1990); *see also King v. Superior Court*, 138 Ariz. 147, 150 n.3, 673 P.2d 787, 790 n.3 (1983); Ariz. R.P. Spec. Act. 1(a). Additionally, the facts presented compel the conclusion that the trial court should have granted the motion. *See Ariz. R.P. Spec. Act. 3(c)*.

In November 2012, Petitioners agreed to represent McFarland in a post-decree custody matter. McFarland paid a retainer and signed a representation agreement, which provided in part that Petitioners could withdraw from representation if McFarland failed to pay attorneys' fees and expenses when due. A friend of McFarland's agreed to act as a guarantor and began paying McFarland's fees. The guarantor, however, withdrew his fee guarantee on April 16, 2013, and ceased making payments soon thereafter. Petitioners sought a new guarantor or other security, and McFarland represented that payment and/or guarantees were forthcoming, ostensibly through her father.

Meanwhile, on May 16, the court set trial in the underlying matter for July 31, 2013. On May 27, McFarland's father notified Petitioners that he was financially incapable of paying the outstanding bill or guaranteeing McFarland's fees. Petitioners requested McFarland's consent to withdraw, but she refused and offered no payment plan. By May 31, 2013, McFarland owed approximately \$24,900 for work already completed.

On May 29, 2013, Petitioners filed a motion to withdraw as counsel for McFarland. In support of their motion, Petitioners referenced the substantial legal fees owed and argued that continued representation of McFarland without payment of her fees would cause Petitioners' small law firm to suffer severe financial hardship. McFarland filed a letter objecting to Petitioners' withdrawal, but did not dispute that she owes legal fees to Petitioners. Petitioners filed a combination reply and motion for reconsideration, noting the hardship created by the substantial amount of McFarland's delinquent attorneys' fees and expected future fees, McFarland's failure to offer a payment plan, and lead counsel's (Mead's) significant health problems, including eye surgery, which have restricted his ability to work and therefore necessitated that Petitioners defer other clients' matters in favor of McFarland's case, causing "an already difficult financial situation" to become "terminal."

On June 3, 2013, the trial court issued its order denying Petitioners' motion to withdraw from representation, explaining only that "[m]oney is not a good cause to grant withdrawal of counsel." On June 14, the court denied Petitioners' motion for reconsideration. Upon motion of the mental health evaluator appointed by the court, the trial date in the underlying action has been continued to August 29, 2013.

An attorney has "a right to be paid for his services." *In re Marriage of Taliaferro*, 188 Ariz. 333, 341, 935 P.2d 911, 919 (App. 1996). Further, McFarland, as the client and principal, has a duty to pay her attorney. Restatement (Third) of Agency § 8.13 cmt. d (2006). Although withdrawal is not automatically allowed, a client's failure to pay reasonable attorneys' fees may qualify as a good and valid reason justifying withdrawal. See *Riley*, 165 Ariz. at 140, 796 P.2d at 942; Restatement (Third) of the Law Governing Lawyers § 32 cmt. k (2000) ("A client's failure to perform a substantial obligation to the lawyer regarding the lawyer's services, such as a failure to pay a substantial amount of fees when due, may warrant the lawyer's withdrawal.").

Rule 9(A)(2)(c)(2), Ariz. R. Fam. Law P., provides that after a case has been set for trial, counsel may be allowed to withdraw without the client's consent only if "the court finds good cause to permit the attorney to withdraw." *Accord* Ariz. R. Civ. P. 5.1(a)(2)(C). Although Rule 9(A)(2)(c)(2) does not define "good

cause," a lawyer generally may withdraw from representing a client if the client fails substantially to fulfill the terms of her fee agreement and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled, Ariz. R. Sup. Ct. 42, ER 1.16(b)(5) & cmt. 8, or if "the representation will result in an unreasonable financial burden on the lawyer." Ariz. R. Sup. Ct. 42, ER 1.16(b)(6).

In this case, Petitioners have at a minimum demonstrated an unreasonable financial burden caused by McFarland's substantial amount of delinquent attorneys' fees, McFarland's failure to pay those delinquent fees and to make reasonable arrangements to pay existing and future fees and expenses, and lead counsel's significant health problems, which have limited his ability to work and required Petitioners' small law firm to defer other clients' matters in favor of McFarland's case. Moreover, McFarland has not disputed the reasonableness of Petitioners' fees, and it was not until after the case was set for trial that McFarland and her family made clear they had no funds to pay Petitioners. Additionally, Petitioners' motion was timely made more than two months before trial, and given the fact that the trial date in the underlying action has been continued to August 29, 2013, any further delay or possible prejudice to McFarland or the opposing party caused by Petitioners' withdrawal will likely be minimal. Accordingly,

**IT IS ORDERED** granting Petitioners' motion for expedited consideration.

**IT IS FURTHER ORDERED** accepting jurisdiction of Petitioners' special action petition.

**IT IS FURTHER ORDERED** vacating the trial court's orders denying Petitioners' motion to withdraw and motion for reconsideration.

**IT IS FURTHER ORDERED** granting Petitioners' motion to withdraw.

**IT IS FURTHER ORDERED** that the clerk of this court provide a copy of this Decision Order to the Honorable Gerald J. Porter, a Judge of the Superior Court, and to each party appearing herein.

/s/

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LAWRENCE F. WINTHROP, Judge