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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SECURITIES & EXCHANGE)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
JAMES B. DUNCAN; HENDRIX)
M. MONTECASTRO; MAURICE)
E. MCLEOD; PACIFIC)
WEALTH MANAGEMENT, LLC;)
STONEWOOD CONSULTING,)
INC.; and TOTAL RETURN)
FUND, LLC; Defendants;)
and CHRISTOPHER J.)
OETTING, dba OETTING)
INDUSTRIES; ANTHONY M.)
CONTRERAS; and)
BIOCYBERNAUT INSTITUTE,)
INC., Relief Defendants,)
)
Defendants.)

Case No. CV 08-1323-VAP
(OPx)
**[Motion filed on August 6,
2008]**
**ORDER GRANTING ATTORNEY PAUL
RUNES'S MOTION TO WITHDRAW
APPEARANCE FOR DEFENDANT
MAURICE McLEOD**

Attorney Paul Runes's Motions for Permission to
Withdraw Appearance for Defendant Maurice McLeod came
before the Court for hearing on September 15, 2008.
After reviewing the Court's tentative ruling, counsel
for the parties submitted on the ruling without
argument. After reviewing and considering all papers

1 filed in support of the Motion, and in light of the lack
2 of Opposition to it, the Court GRANTS Runes's Motion to
3 Withdraw as counsel for Defendant Maurice McLeod.

4
5 **I. BACKGROUND**

6 **A. Procedural History**

7
8 The Securities and Exchange Commission (SEC) filed a
9 Complaint for Violation of the Federal Securities Laws
10 against several defendants, including Maurice McLeod, on
11 February 27, 2008. It came to this Court through a low-
12 number transfer on March 14, 2008. Attorney Paul Runes,
13 along with co-counsel Lewis Crouse (or perhaps
14 "Krouse"),¹ represented defendant Maurice McLeod.
15 (Declaration of Paul Runes attached to Motion to
16 Withdraw "Runes Decl." at ¶¶ 1-2).

17
18 The Court conducted a scheduling conference on July
19 28, 2008, at which it directed the SEC to file any
20 motion to disqualify McLeod's attorney within 30 days.
21 The SEC has not filed such a motion.

22
23 On August 6, 2008, Runes filed for permission to
24 withdraw from representation of defendant McLeod (Motion

25
26 ¹The attorney's name appears as "Lewis R. Crouse"
27 below his signature on Maurice E. McLeod's Consent to
28 Judgment of Permanent Injunction, filed August 25, 2008.
However, Runes has spelled the name "Krouse" throughout
his request to withdraw and supporting documents.
"Crouse" is used here.

1 by Attorney Paul Runes for Permission to Withdraw
2 Appearance for Defendant Maurice McLeod "Mot."). The
3 SEC filed a Statement of Non-Opposition on September 2,
4 2008 ("Statement"). Defendant McLeod has filed no
5 opposition or other response to the Motion.

6

7 **B. Factual Background**

8 The SEC alleges that defendants committed
9 securities fraud, including operating a Ponzi-like
10 scheme. (Complaint "Compl." ¶¶ 3-4.) As stated above,
11 attorney Runes, along with attorney Crouse, have thus
12 far represented Defendant McLeod. (Runes Decl. ¶¶ 1-
13 2). Attorney Runes has also represented McLeod, as
14 well as Defendants Chris Oetting, Pacific Wealth
15 Management, LLC, and Total Return Fund, LLC, in a
16 related California Superior Court case. (Runes Decl. ¶
17 1; Joint Report on Fed. R. Civ. P. 26(f) Conference 7
18 "Jt. Rep.")

19

20 The retainer agreement between Runes and McLeod
21 requires Runes to withdraw from the representation if
22 the SEC entered into communications with Defendant
23 McLeod regarding settlement. (Runes Decl. ¶ 2.) At
24 that point, "Lewis Krouse" was to represent McLeod.
25 (Runes Decl. ¶ 2.) Runes states that settlement
26 discussions have begun. (Runes Decl. ¶¶ 3-4.)

27

28

1 Accordingly, Runes now seeks to withdraw from
2 representation of McLeod.

3

4 The SEC does not oppose the motion to withdraw
5 (Statement para. 1.), but notes that it does not
6 endorse or adopt Runes's suggestion that his withdrawal
7 will eliminate all conflicts of interest. (Statement
8 para. 1.)

9

10 **II. LEGAL STANDARD**

11

12 Rule 83-2.9.2.1 of the Local Civil Rules, Central
13 District of California, requires that an attorney
14 representing an individual to seek leave of the court
15 to withdraw as counsel. Local R. 83-2.9.2.1. The
16 California Rules of Professional Conduct permit
17 permissive withdrawal where "continued employment will
18 result in violation of these rules." Cal. R. Prof.
19 Conduct 3-700(B)(2). Representation of clients with
20 conflicting interests can lead to a violation of the
21 California Rules. See Cal. R. Prof. Conduct 3-
22 310(C)(1) (attorneys "shall not, without the informed
23 written consent of each client: Accept representation
24 of more than one client in a matter in which the
25 interests of the clients potentially conflict . . .")

26

27 **III. DISCUSSION**

28

29 Attorney Runes represents McLeod in this action and
30 several defendants in a related state court case.
31 (Runes Decl. ¶¶ 1-2; Jt. Rep. 7). The SEC has begun

32

1 settlement discussions with McLeod. (Id. at ¶¶ 3-4.)
2 Representation of more than one party during settlement
3 discussions could lead to a conflict of interest that
4 violates the California Rules of Professional Conduct.
5 See Cal. R. Prof. Conduct 3-310(C)(1). Although Runes
6 does not explain how continued representation will or
7 may constitute a conflict of interest, as the SEC
8 points out, Runes may be forced "to cross examine his
9 current clients . . . as well as his former clients. .
10 . ." (Jt. Rep. 8.) Permission to withdraw is
11 therefore consistent with the California Rules of
12 Professional Conduct.

13
14 According to Runes's representations to the Court,
15 withdrawal in this situation also is consistent with
16 the retainer agreement between Runes and McLeod.
17 ((Runes Decl. ¶ 2) Runes has sought stipulation of co-
18 counsel Crouse and Defendant McLeod for his withdrawal
19 as counsel of record but has not yet received their
20 signatures. (Runes Decl. ¶ 6, Ex. A.) Both Crouse and
21 McLeod have been served with this motion and have not
22 objected to it. Runes Decl. Ex. A. Runes's withdrawal
23 is therefore consistent with his retainer agreement
24 with his client and does not leave Defendant McLeod
25 unrepresented.

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IV. CONCLUSION

For the reasons set forth above, the Motion is GRANTED.

Dated: September 17, 2008

Virginia A. Phillips

VIRGINIA A. PHILLIPS
United States District Judge