

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EDWARD ANSLEY,
Petitioner,
v.
FRED FOULK,
Respondent.

No. 2:14-cv-2376 CKD (HC)

ORDER

Petitioner is a California inmate proceeding through counsel with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Currently pending before the court is counsel’s motion to withdraw as attorney of record for petitioner pursuant to Local Rule 182(d). ECF No. 10. Counsel brings this motion on the grounds that petitioner is in breach of his fee agreement.

Local Rule 182(d) provides that attorneys may not withdraw from an action in which they have appeared, leaving the client in propria persona, without leave of the court upon noticed motion and notice to the client and all other parties who have appeared. The Local Rule incorporates the requirements for withdrawal and the Rules of Professional Conduct of the State Bar of California. The Rules of Professional Conduct of the State Bar of California provide in pertinent part:

A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to

1 the client, allowing time for employment of other counsel,
2 complying with rule 3–700(D), and complying with applicable laws
and rules.

3 California Rules of Professional Conduct, Rule 3–700(A)(2).

4 Pursuant to California Rules of Professional Conduct, Rule 3–700(C), withdrawal is
5 permitted in certain specified circumstances. Specifically, Rule 3–700(C)(1)(f) permits
6 withdrawal where the client breaches an agreement or obligation to the attorney as to expenses or
7 fees.

8 Counsel has complied with the requirements of Local Rule 182(d) by notifying petitioner
9 by letter sent via Federal Express that he would be filing a motion to withdraw. ECF No. 10 at 4-
10 5. According to counsel, petitioner acknowledged receipt of this letter in subsequent written
11 correspondence. See ECF No. 10 at 4. Counsel has also provided the court with plaintiff's
12 current or last known address. ECF No. 10 at 2.

13 Based on counsel's representations to the court during the July 26, 2017 order to show
14 cause hearing, it appears that petitioner's ineffective assistance of counsel claim remains
15 unexhausted in state court. In light of this court's ruling on counsel's motion to withdraw,
16 additional time is warranted to allow petitioner to file a pro se habeas corpus petition in the
17 California Supreme Court concerning his allegations that his trial attorney was ineffective. Once
18 the California Supreme Court has ruled on petitioner's habeas corpus application, then petitioner
19 is directed to file a "Motion to Lift the Stay" of his pending federal habeas corpus petition. Until
20 such time, this case will remain administratively closed.


21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. Petitioner's motion to withdraw as counsel of record, ECF No. 10, is granted;
- 23 2. The Clerk of Court is directed to amend the docket to reflect petitioner's pro se status
24 and to update petitioner's address of record to the following: Edward Ansley, C-
25 94688, California Men's Colony, P.O. Box 8103, San Luis Obispo, CA 93409-8103;
- 26 3. This court's May 30, 2017 order to show cause is discharged;
- 27 4. This case shall remain administratively closed pending petitioner's exhaustion of state
28 court remedies with respect to his ineffective assistance of trial counsel claim; and,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5. Petitioner is ordered to file a motion to lift the stay within thirty days of any decision by the California Supreme Court.

Dated: August 1, 2017



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

12/ansl2376.motiontowithdraw