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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 LAILA KIA,

9 Plaintiff,

No. 12-05317 EDL

10 v.

**ORDER GRANTING MOTION TO
WITHDRAW AS COUNSEL**

11 THE CALIFORNIA PUBLIC EMPLOYEES'
12 RETIREMENT SYSTEM, et al.,

13 Defendants.
14 _____/

Background

15 This case was initiated as an ERISA case against Defendants CalPERS and Defendant Kia,
16 who resides in Iran. Plaintiff dismissed CalPERS, so the action remains only as to Kia, Plaintiff's
17 former husband. In June 2014, this Court referred the matter to Magistrate Judge James for a further
18 settlement conference to take place between October 14, 2014 and October 27, 2014 and stated that,
19 "The parties are ordered to attend. In particular, Plaintiff must appear in person at the further
20 settlement conference." See Dkt. # 69. Judge James set a settlement conference for October 15,
21 2014. On October 8, 2014, Plaintiff's counsel, Raye Mitchell, filed this motion to withdraw as
22 counsel on the bases that Plaintiff has breached her payment obligations to counsel, has been
23 uncommunicative and inaccessible to counsel, and a third party has substantially interfered in the
24 relationship between Plaintiff and counsel. The motion indicates that counsel was unable to meet
25 with Plaintiff to prepare for the settlement conference and was unable to confirm that Plaintiff would
26 attend the settlement conference. On October 14, 2014, Judge James vacated the settlement
27 conference set for the next day. Thereafter, Plaintiff filed a response to the motion to withdraw,
28 arguing that she has adequately paid counsel and has been available to counsel but counsel has
refused to provide her with a copy of their fee arrangement, statement of services rendered or

1 accounting. For the following reasons, the motion to withdraw is GRANTED but counsel is
2 required to forward papers to Plaintiff until she retains new counsel pursuant to Local Rule 11-5.

3 **Legal Standard**

4 Civil Local Rule 11-5 provides that: “[c]ounsel may not withdraw from an action until relieved
5 by order of Court after written notice has been given reasonably in advance to the client and to all
6 other parties who have appeared in the case.” Further, “[w]hen withdrawal by an attorney from an
7 action is not accompanied by simultaneous appearance of substitute counsel or agreement of the
8 party to appear pro se, leave to withdraw may be subject to the condition that papers may continue to
9 be served on counsel for forwarding purposes, unless and until the client appears by other counsel or
10 pro se.” Civil L.R. 11-5(b). In this district, the conduct of counsel, including withdrawal of counsel,
11 is governed by the standards of professional conduct required of members of the State Bar of
12 California. See Elan Transdermal Limited v. Cygnus Therapeutic Systems, 809 F.Supp. 1383, 1387
13 (N.D.Cal.1992). Under California Rule of Professional Conduct 3-700(C)(1)(f), an attorney may
14 request permission to withdraw if the client breaches an agreement or obligation to the member as to
15 expenses or fees. An attorney may also permissively withdraw “if the client renders it unreasonably
16 difficult for the member to carry out the employment effectively.” See Cal. Rules Prof. Cond.
17 3-700(C)(1)(c). The decision to grant or deny an attorney’s motion to withdraw as counsel is
18 committed to the sound discretion of the trial court. LaGrand v. Stewart, 133 F.3d 1253, 1269 (9th
19 Cir. 1998).

20 **Discussion**

21 Counsel persuasively argues that she should be allowed to withdraw because Plaintiff has
22 rendered it unreasonably difficult for her to carry out her representation effectively. Specifically,
23 counsel contends that she is unable to communicate with Plaintiff by phone or in person and receives
24 no response that text messages. While counsel acknowledges the exchange of 50-100 emails, she
25 states that she has been “unable to authenticate the emails as originating from the Plaintiff.” Motion
26 at 5; Mitchell Decl. ¶ 3. Counsel states that she was unable to communicate with Plaintiff in
27 advance of the settlement conference set for October 15 and did not receive a confirmation that
28 Plaintiff would show up at the conference. Additionally, counsel believes that Plaintiff is under the

1 influence of a third party, Mr. Valiyee, who claims to be taking over the decision-making in
2 Plaintiff's cases because he is paying her bills. Counsel states that she has no agreement with Mr.
3 Valiyee nor duty to him, and he is interfering in the attorney-client relationship. Plaintiff responds
4 that she has been available to counsel through email and is "almost always available by telephone."
5 Response ¶ 4. However, Plaintiff does not address counsel's argument that Mr. Valiyee has
6 unreasonably interfered in the attorney-client relationship or explain Mr. Valiyee's role in the
7 representation.

8 In light of the correspondence from Mr. Valiyee attached to counsel's briefs, it does appear
9 that counsel's communication with Plaintiff is being hindered by Mr. Valiyee. For example, Mr.
10 Valiyee states that "[Plaintiff] can no longer make decisions regarding your actions because I am the
11 one footing the bills," and advises counsel not to communicate directly with Plaintiff and to
12 communicate with him by email or letter. See Mitchell Decl. Attachment. Because counsel cannot
13 communicate directly with her client, and cannot fulfill her duty of loyalty to her client in light of
14 Mr. Valiyee's interference, it is unreasonably difficult for her to carry out her representation
15 effectively and this alone supports her request to withdraw.

16 Plaintiff's counsel also requests permission to withdraw in part because she contends that she
17 has not been paid for services rendered since March 2014 but does not specify the amount owed.
18 Mitchell Reply Decl. ¶ 2. It appears from correspondence submitted by counsel with her declaration
19 that a third party, Mr. Reza Valiyee, has been "footing the bills," but it is unclear when or how much
20 Mr. Valiyee has paid her. See Mitchell Decl. Attachments. Plaintiff responds that she has paid
21 counsel more than \$149,000 for this matter and counsel should be required to "finish the job she
22 started." Response ¶¶ 2, 7. However, it is unclear when this payment was made and what costs or
23 fees it was intended to cover. In light of this dispute over whether counsel has been appropriately
24 compensated, the Court does not rely on non-payment of fees as a basis for allowing counsel to
25 withdraw.¹

27 ¹Plaintiff's response also states that she has requested and been denied copies of fee contracts,
28 a statement of services rendered and an accounting and requests that the Court issue an order to show
cause why counsel should not be held in contempt for failing to provide this information. Response ¶¶
3, 7. Plaintiff also states that counsel has "several times simply failed and refused to file required papers

1 Counsel has taken steps to avoid reasonably foreseeable prejudice to Plaintiff. See Cal. Rules
2 of Prof. Conduct 3-700(a)(2) (“ A member shall not withdraw from employment until the member
3 has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client,
4 including giving due notice to the client, allowing time for employment of other counsel, complying
5 with rule 3-700(D), and complying with applicable laws and rules.”). She has provided notice of
6 this motion to Plaintiff and Plaintiff has responded. Plaintiff may be able to obtain new counsel as
7 there are several months before trial. Indeed, it appears from Mr. Valiyee’s letters that he and
8 Plaintiff are in communication with another attorney. See Mitchell Decl. Attachment (“you have left
9 us little choice but to switch council [sic] again. Even the current council [sic] that we are speaking
10 with will not sign the Substitution of Attorney forms until he has sorted out what is going on . . . He
11 will sign them when he is ready, but until then the cases cannot legally be dropped. We understand
12 that you will no longer do any work on them without payment, which is not anything we ever asked
13 or expected from you. Mr. Torbet will contact you when he is ready.”). Given the lack of
14 communication between counsel and Plaintiff, that the attorney-client relationship appears to have
15 deteriorated beyond repair and Plaintiff can obtain new counsel, the motion to withdraw is
16 GRANTED. However, to avoid any possible prejudice to Plaintiff counsel is required to forward
17 papers to Plaintiff until she retains new counsel pursuant to Local Rule 11-5.

18 Plaintiff is cautioned that she must prosecute her case diligently whether or not she remains
19 *pro se*. The Court does not condone her apparent failure to make plans to appear at the settlement
20 conference, as required. Nor is it appropriate for a third party to control Plaintiff’s case. Failure to
21 appear as required and prosecute this matter appropriately may be grounds for dismissal.

22 **IT IS SO ORDERED.**

23 Dated: November 3, 2014


ELIZABETH D. LAPORTE
United States Magistrate Judge

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27 or appeared as ordered” but does not further describe these alleged transgressions. Response ¶ 5.
28 Counsel denies that she has failed to account for money paid for past services, but does not respond to
Plaintiff’s argument that she has refused to provide Plaintiff with an accounting or copy of their fee
agreement. Mitchell Reply Decl. ¶ 2. Given the lack of information and evidence relating to these
alleged ethical violations, the Court makes no decision relating these issues.