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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

THE ESTATE OF KYLE PRZYSIECKI,
et al.,

Plaintiff,

vs.
SHANNON DUANE EIFERT, et al.,

Defendant.

CASE NO. 07cv39 WQH (RBB)

ORDER

HAYES, Judge:

The matters before the Court are two Motions to Withdraw as Counsel filed by Plaintiffs’ Attorneys. (Docs. # 92, 94).

BACKGROUND

Plaintiffs’ action arises out of the death of Kyle Przysiecki, a 15-year-old boy who was killed in a motor vehicle collision. On January 5, 2007 Plaintiff Michael Przysiecki, the deceased’s father, acting on his own behalf and in his capacity as the administrator of his son’s estate, and Plaintiff Venus Hicksaw, the deceased’s mother, acting in her capacity as an administrator of her son’s estate, initiated this action by filing the complaint. (Doc. # 1). On December 4, 2007, the Court granted Plaintiff Venus Hisaw’s Motion to Intervene on her own behalf. (Doc. # 53). The Estate of Kyle Przysiecki (“the Estate”), Michael Przysiecki and Venus Hisaw are all represented by the law firm of Alvila & Peros, LLP.

On October 29, 2009, Alvila & Peros filed a First Amended Motion to Withdraw as

1 Counsel (“Motion to Withdraw”). (Doc. # 92). In the Motion to Withdraw, Alvila & Peros
2 requests permission to withdraw from representing the Estate and Venus Hisaw because of a
3 conflict of interest. *Id.* On November 4, 2009, Alvila & Peros filed its second Motion to
4 Withdraw as Counsel (“Motion to Remove Attorneys”) seeking to remove three attorneys from
5 the docket who are currently listed as representing Plaintiffs because those attorneys have left
6 the firm. (Doc. # 94).

7 ANALYSIS

8 1. Motion to Withdraw

9 The Motion to Withdraw contends a settlement agreement was reached in principle, but
10 that Avila & Peros was “unable to secure the signature of [Venus Hisaw] on the release
11 agreements.” (Doc. # 92-2 at 3). The Declaration of Michael Avila, attached to the motion,
12 states that the firm is “on the opposite side of a legal dispute” with Venus Hisaw, which creates
13 a conflict of interest requiring the firm to withdraw from representing her and the Estate, in
14 which she has an interest. (Doc. # 92-3 at 2).

15 In the Southern District of California, Local Civil Rule 83.4 requires counsel “comply
16 with the standards of professional conduct required of members of the State Bar of California
17 . . . which are now adopted as standards of professional conduct of this court.” Local Civil
18 Rule 83.4 also states “[t]his specification will not be interpreted to be exhaustive of the
19 standards of conduct,” and references the model rules of the American Bar Association
20 (“ABA”). Finally, even in the absence of a specific applicable rule, “[n]o attorney permitted
21 to practice before this court will engage in any conduct which degrades or impugns the
22 integrity of the court or in any manner interferes with the administration of justice within the
23 Court.” *Id.*

24 California Rule of Professional Conduct 3-700 provides:

25 Rule 3-700 Termination of Employment

26 (A) In General.

27 (1) If permission for termination of employment is required by the rules of a
tribunal, a member shall not withdraw from employment in a proceeding before
that tribunal without its permission.

28 (2) A member shall not withdraw from employment until the member has taken
reasonable steps to avoid reasonably foreseeable prejudice to the rights of the

1 client, including giving due notice to the client, allowing time for employment
2 of other counsel, complying with rule 3-700(D), and complying with applicable
3 laws and rules. . . .

4 (C) Permissive Withdrawal.

5 [If the mandatory withdrawal provisions of 3-700(B) are inapplicable,] a
6 member may not request permission to withdraw in matters pending before a
7 tribunal, and may not withdraw in other matters, unless such request or such
8 withdrawal is because:

9 (1) The client

10 (a) insists upon presenting a claim or defense that is not warranted under existing
11 law and cannot be supported by good faith argument for an extension,
12 modification, or reversal of existing law, or

13 (b) seeks to pursue an illegal course of conduct, or

14 (c) insists that the member pursue a course of conduct that is illegal or that is
15 prohibited under these rules or the State Bar Act, or

16 (d) by other conduct renders it unreasonably difficult for the member to carry out
17 the employment effectively, or

18 (e) insists, in a matter not pending before a tribunal, that the member engage in
19 conduct that is contrary to the judgment and advice of the member but not
20 prohibited under these rules or the State Bar Act, or

21 (f) breaches an agreement or obligation to the member as to expenses or fees.

22 (2) The continued employment is likely to result in a violation of these rules or
23 of the State Bar Act; or

24 (3) The inability to work with co-counsel indicates that the best interests of the
25 client likely will be served by withdrawal; or

26 (4) The member's mental or physical condition renders it difficult for the
27 member to carry out the employment effectively; or

28 (5) The client knowingly and freely assents to termination of the employment;
or

(6) The member believes in good faith, in a proceeding pending before a
tribunal, that the tribunal will find the existence of other good cause for
withdrawal.

The ABA's Model Rule of Professional Conduct 1.7(a) provides: "a lawyer shall not
represent a client if the representation involves a concurrent conflict of interest. A concurrent
conflict of interest exists if: . . . there is a significant risk that the representation of one or more
clients will be materially limited . . . by a personal interest of the lawyer."

Avila & Peros has demonstrated that continuing to represent Venus Hisaw would be
"unreasonably difficult," which permits the firm to withdraw from representing her under the
California Rules of Professional Conduct. Avila & Peros has also shown that there is a
"significant risk" that their continued representation of Venus Hisaw would be "materially

1 limited” by personal interests of the firm, which requires the firm to withdraw under the
2 ABA’s Model Rules of Professional Conduct. The Court therefore grants the Motion to
3 Withdraw from representing Venus Hisaw.

4 However, if Avila & Peros withdraws from representing the Estate, the Estate will not
5 have representation and cannot maintain this action. Estates may not proceed *pro se* in federal
6 court. *See, e.g., Simon v. Hartford Life and Accident Ins. Co.*, 546 F.3d 661, 664-65 (9th Cir.
7 2008) (“[C]ourts have routinely adhered to the general rule prohibiting pro se plaintiffs from
8 pursuing claims on behalf of others in a representative capacity.”) (citing 28 U.S.C. § 1654).
9 Even where a law firm has a conflict of interest, the California Rules of Professional Conduct
10 forbid withdrawal until the firm “has taken reasonable steps to avoid reasonably foreseeable
11 prejudice to the rights of the client.” *See* California Rule of Professional Conduct 3-700(A)(2).
12 The Court therefore denies the Motion to Withdraw from representing the Estate of Kyle
13 Przysiecki without prejudice.

14 **2. Motion to Remove Attorneys**

15 The Motion to Remove Attorneys seeks to remove three attorneys who are no longer
16 associated with the law firm of Avila & Peros as counsel for all Plaintiffs. (Doc. # 94-2). The
17 motion contends John P. Kristensen, Daniel A. Desoto, and John T. Lupton have relocated to
18 different law firms and “new geographical locations” and are no longer working on this action.
19 *Id.* at 4. The motion contends Michael Avila became the primary attorney on the case after
20 Kristensen, Desoto, and Lupton left Avila & Peros and that no prejudice to the clients has
21 occurred as a result of this change. *Id.* The motion contends that the change of counsel
22 complied with the California Rules of Professional Conduct. *Id.* at 3-4.

23 The Court concludes that these three attorneys are permitted to withdraw from
24 representing all Plaintiffs.


25 **ORDER**

26 IT IS HEREBY ORDERED that Plaintiff’s counsel’s Motion to Withdraw (Doc. # 92)
27 is **GRANTED IN PART and DENIED IN PART**. The law firm of Avila & Peros may
28 withdraw from representing Plaintiff Venus Hisaw, but may not withdraw from representing

1 the Estate of Kyle Przysiecki based upon the record before this Court. Plaintiff's Motion to
2 Remove Attorneys (Doc. # 94) is **GRANTED**. John P. Kristensen, Daniel A. Desoto, and
3 John T. Lupton may withdraw as counsel for all Plaintiffs. The Clerk of the Court shall amend
4 the docket to reflect these changes.

5 IT IS FURTHER ORDERED that **Plaintiff Venus Hisaw must notify the Court**
6 **within 60 days** of the date of this order whether she has secured new counsel or whether she
7 intends to proceed *pro se*. The Clerk of the Court shall mail a copy of this order to Plaintiff
8 Venus Hisaw.

9 DATED: January 6, 2010

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11 **WILLIAM Q. HAYES**
12 United States District Judge

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