

MEMORANDUM

On October 26, 2012, Plaintiff Paul Ceglia was arrested by federal agents on felony fraud counts. Doc. No. 589-1. Three days later, Ceglia's lawyer Dean Boland told the *New York Times*, "If I thought this was a fraud, I would have bailed out two seconds later." Southwell Decl., Ex. A. The next morning, Boland moved to withdraw as counsel of record. Doc. No. 579. Boland seeks to be the tenth law firm to abandon its representation of Ceglia in this case.

In support of his motion, Boland submitted two documents: (1) an "*in camera* communication" describing the "personal reasons" that purportedly justify Boland's request to withdraw (the "Communication") and (2) a publicly filed memorandum in which Boland denies that his request has anything "to do with any belief" that Ceglia is committing fraud (Doc. No. 580).

I. Defendants Do Not Oppose Boland's Request to Withdraw, Provided That Withdrawal Does Not Delay Dismissal Of Ceglia's Fraudulent Lawsuit.

Two factors guide this Court's determination of a motion to withdraw: "the reasons for withdrawal and the impact of the withdrawal on the timing of the proceeding." *Sang Lan v. AOL Time Warner, Inc.*, No. 11-cv-02870 (LBS)(JCF), 2011 WL 5170311, at *1 (S.D.N.Y. Oct. 31, 2011). "[D]istrict courts have typically considered whether the prosecution of the suit is likely to be disrupted by the withdrawal of counsel." *Whiting v. Lacara*, 187 F.3d 317, 320 (2d Cir. 1999).

Given Ceglia's extensive history of litigation misconduct, and the timing of Boland's motion, Defendants are concerned that Ceglia and his lawyers may be attempting to obstruct this Court's processes or to gain tactical advantage in Ceglia's criminal case. There is absolutely no reason, however, that Boland's departure should delay dismissal of this fraudulent lawsuit.

Defendants' pending Motion to Dismiss (Doc. No. 319) is fully briefed and ripe for decision.¹ Furthermore, Paul Argentieri has served as Ceglia's counsel of record from the beginning of this case—indeed, Argentieri defended Ceglia in a prior civil lawsuit brought by the New York State Attorney General, prepared Ceglia's original Verified Complaint (Doc. No. 1-4), and was entrusted with access to the safety deposit box in which the forged Work for Hire Document presented to Defendants' experts was stored.

Accordingly, Defendants do not oppose Boland's motion, provided that his withdrawal does not give Ceglia a pretext to further obstruct this Court's processes or to delay the Court's determination of Defendants' Motion to Dismiss. Should the Court conclude—following a searching inquiry—that Boland's request is justified, Defendants respectfully request that the Court enter a conditional grant and state that such approval shall not be construed as authorizing any further delay by Ceglia in conducting any aspect of this litigation. A conditional grant is with precedent in this case: the Court's June 5, 2012 Order granting Ceglia's seventh, eighth, and ninth former law firms' withdrawal motion included such a condition. *See* Doc. No. 423 (cautioning Ceglia that any requests for enlargements of time based on the withdrawal would be viewed with disfavor); *see also Schine v. Crown*, No. 89-cv-03421 (MJL), 1993 WL 127199, at *1 (S.D.N.Y. Mar. 31, 1993).

Needless to say, Boland's withdrawal would not excuse his participation in Ceglia's fraudulent scheme, which occurred after Defendants advised Boland of his heightened duty, pursuant to Rule 11, to investigate the factual basis for continuing to prosecute this fraudulent lawsuit. Defendants intend to hold accountable all those who aided in Ceglia's fraud—including

¹ The deadline for Ceglia's Opposition to Defendants' Motion for Judgment on the Pleadings (Doc. No. 321) is November 19, 2012, and will thus be submitted before the scheduled November 27th hearing on Boland's withdrawal motion. *See* Doc. No. 565, 572.

his attorneys and former attorneys—notwithstanding Defendants’ conditional consent to Boland’s withdrawal.

II. This Court Should Order Disclosure Of Boland’s Improper *In Camera* Communication.

Boland’s self-serving *in camera* Communication violates the Local Rules of the Western District of New York and is contrary to Second Circuit authority. This Court should therefore order the Communication publicly docketed, or at least disclosed to Defendants, in advance of the scheduled November 27, 2012 hearing on Boland’s motion. Doc. No. 582.

First, Boland’s *in camera* Communication violates the Local Rules. Boland has not made the “substantial showing” necessary to restrict public access to Court documents, as required by Local Rule 5.3(a). *See also Gambale v. Deutsche Bank AG*, 377 F.3d 133, 140 (2d Cir. 2004) (noting qualified constitutional and common rights of access to judicial documents).

Furthermore, by submitting *in camera* a statement of “personal reasons” while filing publicly a self-serving memorandum—that he admits was for “the media” (Doc. No. 580 at 2)—Boland has violated Local Rule 83.2(d)(1). That Rule, which governs attorney motions to withdraw, directs an attorney to file a bare-bones Notice of Motion stating that he wishes to submit his reasons for withdrawal *in camera*.² It does not authorize the submission of explanatory memoranda that purport to detail the reasons that are not implicated by the attorney’s withdrawal. In this way, Boland improperly uses confidentiality as a sword and as a shield, selectively describing his withdrawal to the public while cloaking the reasons underlying that withdrawal via *in camera* submission.

Second, the law in this Circuit is clear: *in camera* submission of the reasons underlying an attorney’s withdrawal is justified “where necessary to preserve the confidentiality of the

² Boland’s Notice of Motion does not state that he wishes to submit his reasons for withdrawal *in camera*, in violation of Rule 83.2(d)(1). *See* Doc. No. 579.

attorney-client relationship between a party and its counsel.” *Team Obsolete Ltd. V. A.H.R.M.A. Ltd.*, 464 F.Supp.2d 164, 165 (E.D.N.Y. 2006); *see also Diamond “D” Construction Corp. v. New York State Dept. of Labor*, No. 00-CV-335C(F), 2004 WL 1663992, at *1 (W.D.N.Y. July 23, 2004) (Foschio, J.) (unsealing documents filed in support of attorney’s motion to withdraw because “no subjects of a confidential matter or work product, nor other information to which the attorney-client privilege may apply, will be revealed if the documents do not remain under seal”). Boland does not claim that his *in camera* Submission contains any client communications, attorney work product, or other confidential information. To the contrary, Boland states that the information contained in his Communication is “personal” and has not been communicated to Ceglia, who at the time of Boland’s motion remained in federal custody. Accordingly, Boland’s *in camera* submission appears not to have been “necessary” to safeguard attorney-client confidences. Rather, its sole purpose appears to be to protect Boland’s reputation with “the media.” Doc. No. 580 at 2.

Because Boland’s *in camera* Communication violated the Local Rules and is contrary to Second Circuit authority, Defendants respectfully submit that the disclosure of that Submission is appropriate. In order for Defendants to participate fully in the hearing on Boland’s motion, Defendants ask this Court to order the Communication publicly docketed, or at least disclosed to Defendants, no later than November 23, 2012.

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