

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

CHARLES HARRIS, as an individual and
UNIQUE PRODUCTS AND SERVICES, a Pennsylvania Corporation

Plaintiffs,

vs.

OPRAH WINFREY, as an individual, and
THE OPRAH WINFREY SHOW d/b/a HARPO PRODUCTIONS INC., an Illinois corporation.

Defendants.

No. :10-cv-05655-JD

Judge: Jan E. DuBois

**MOTION OF JAMES LEE, ESQUIRE TO WITHDRAW AS ATTORNEY FOR
PLAINTIFFS CHARLES HARRIS AND UNIQUE PRODUCTS AND SERVICES AND
MEMORANDUM IN SUPPORT OF THE MOTION**

COMES NOW, the undersigned Attorney, James Lee, Esquire, for the Plaintiffs Charles Harris (“Harris”), and Unique Products and Services (“Unique”) (collectively, “Plaintiffs”), and submits this motion, pursuant to Local Civil Rules 5.1(c) and 83.6(IV)(B), and Pennsylvania Rule of Professional Conduct 1.16(b)(1), (4), (6) and (7), for leave to withdraw as counsel for Plaintiffs and in support thereof avers as follows:

There have arisen irreconcilable fundamental differences between the Plaintiffs and the undersigned in that the Plaintiffs refuse to follow counsel's legal advice. These fundamental differences which have arisen between the undersigned and his client, have further led to a break-down in attorney-client communications and trust and the undersigned will be unable to effectively and properly continue representing the Plaintiffs herein. The undersigned should therefore be granted leave to withdraw.

FACTS

1. Mr. Harris is the author of the booklet “How America Elects Her Presidents”, a non-dramatic literary work with the claim of copyright registered under number TXu 931-707.

2. By way of background, Mr. Harris shipped 10 copies of the booklet to the Oprah Winfrey Show on January 11, 2008, when Ms. Winfrey was supporting the then senator Barrack Obama as the Presidential candidate. Mr. Harris believed that Ms. Winfrey could give his booklet adequate publicity, which would eventually help in the increase in the booklet’s sales, as the booklet dealt with American Presidents, past, as well as the present. To his dismay, however, Ms. Winfrey never endorsed the booklet, and as a result, Mr. Harris’ intention behind shipping them never materialized.

3. After Mr. Harris shipped the booklet to ‘The Oprah Winfrey Show’, on February 10, 2010, Mr. Harris was watching the Show that was dedicated to Ms. Winfrey’s “Search For The World’s Smartest and Talented Kids.” During the show, Ms. Winfrey started asking many questions to children in her audience on different issues. Ms. Winfrey introduced a six-year-old kid, Graham as a “first-grade whiz kid who knows more about American presidents than many adults.” Mr. Harris contends that he heard Ms. Winfrey ask Graham three questions from his booklet (1) “A person must live in the U.S. how long before they become President?¹” (2) “Who was the heaviest President?²” and (3) “The only President who never went to school?³” (Collectively referred to as the “Questions”). Mr. Harris was shocked because these Questions were very similar to those that he had framed in his booklet. As Plaintiffs owned the copyright

¹ Question 3 from the booklet--“How America Elects Her Presidents.”

² Question 12 from the booklet--“How America Elects Her Presidents.”

³ Question 19 from the booklet--“How America Elects Her Presidents.”

in the booklet, he thought Ms. Winfrey infringed the copyright by asking those questions in her show.

4. Thus, Mr. Harris contacted Mr. James Lee's office to seek his assistance in filing copyright infringement suit against Ms. Winfrey and her company. As a result, Mr. Harris met and communicated with Mr. Lee on the matter and filed this Copyright infringement action in this Court. Based on the information provided by Mr. Harris and upon preliminary investigations in to the available facts, the Attorney, Mr. Lee filed this suit.

5. Defendants moved to dismiss the Complaint contending that Plaintiffs have failed to assert a plausible claim, and even if they did assert such a claim, the Copyright Act does not protect the expressions at issue here, and that other claims are preempted.

6. Plaintiffs opposed the motion to dismiss asserting that Defendants' motion should be denied particularly because Plaintiffs have asserted enough facts to establish that Mr. Harris' work was original and that he owned the copyright at the time Ms. Winfrey asked those Questions. Plaintiffs further claimed that they do not claim to have a copyright on historical facts, as Defendants would want the Court to believe, but the way, in which they are presented in the booklet, they fulfill the elements of copyrights.

7. Further, on 12/20/2010, Defendants filed their Supplement to the Motion to dismiss, requesting the court for addition of certified photocopy of the work entitled "How America Elects Her Presidents" deposited in the Library of Congress Copyright Office with the claim of copyright registered under number TXu 931-707.

8. The Defendants alleged in their supplement to the motion to dismiss that there is little resemblance in the copyrighted booklet that they obtained from the Library of Congress Copyright Office and the booklet that the Plaintiffs claim to have been copyrighted.

9. However, the Plaintiff, Mr. Harris was shocked to see the rough draft of his booklet “How America Elects Her President” being attached as the certified photocopy to the Defendant’s supplement to the motion to dismiss. Moreover, Mr. Harris was surprised to see the rough draft being certified as photocopy of his original work, by the Library of Congress Copyright Office.

10. After learning that the rough draft of his booklet was certified as photocopy of his original work, Mr. Harris went to the United States Copyright Office in Washington, D.C. to find out if the Copyright Office had inadvertently supplied rough copy of his booklet to the Defendants’ Attorney. However, Mr. Harris’ worst nightmare came true, when he discovered that the Copyright Office did not copyright his finished booklet in the year 2000, but copyrighted the accompanying rough draft! The Copyright Office has only the composing pages on its file and not the final draft of the booklet “How America Elects Her President”. The rough draft does not contain the entire material present in the finished booklet.

11. Mr. Vankevich, the head of the Copyright Information Section, too, was astonished as the Plaintiff was, to hear about the mistake committed by the Copyright Office. Mr. Vankevich told Mr. Harris that he is going to check the stored material and make sure that the original finished booklet is not overlooked. Mr. Harris has lodged a written complaint with the Copyright Information Section of the United States Copyright Office, Library of Congress, Washington D.C. A true and correct copy of the complaint lodged with the Copyright Office is attached and incorporated herewith as Exhibit “1”.

12. Unbeknownst, that out of the material he sent to the Copyright Office, only the rough draft of his work was copyrighted, Mr. Harris has been selling “How America Elects Her

President” booklet for last ten years with the comfort that he had U.S. Government copyright protection.

13. Thus, at the time this litigation was commenced, James Lee, Esquire was oblivious to the mistake committed by the United States Copyright Office. The Complaint and the various replies and motions prepared by the undersigned are based on the premise that Plaintiffs owned the copyright in the booklet “How America Elects Her Presidents” and that Ms. Winfrey infringed the copyright by asking very similar questions, as in the copyrighted booklet of Mr. Harris, in her show.

14. Therefore, in the wake of the newly revealed facts and the failure of the United States Copyright Office to give any plausible explanation, the Plaintiffs’ Attorney, Mr. Lee believed that Plaintiffs’ rights in the present suit would be seriously prejudiced if they do not first sort the issue of copyright in the booklet with the United States Copyright Office.

15. The Plaintiff’s Attorney also believes that the result of the investigation, in to the Plaintiffs’ complaint by United States Copyrights office, will be decisive and might change the expected outcome of this case.

16. Accordingly, the Plaintiffs’ Attorney, Mr. Lee believes and on this belief advised that it would be in the best interest of the parties to the suit, that this suit be dismissed voluntarily, without prejudiced, by the Plaintiffs, while the United States Copyright Office is investigating the Plaintiffs’ Complaint.

17. Thus, Plaintiffs’ Attorney advised Plaintiffs to end this litigation without prejudice and until they resolve the issue involving copyright of the correct version of the booklet “How America Elects Her President”. The Plaintiffs’ Attorney believes that resolving the aforesaid issue with the Copyright Office would delay this case considerably. In the wake of

the newly revealed facts, the Plaintiffs' attorney also feels that there is no merit in pursuing this claim further without any constructive reply from the United States Copyright Office and that the Plaintiffs should seek to avoid this by withdrawing the present suit against the Defendants.

18. However, the Plaintiffs are not in favor of withdrawing the suit and want to continue pursuing the same without first resolving the aforesaid issue with the Copyright Office, as advised by the Attorney, Mr. Lee.

19. Further, the Attorney Retainer Agreement, section 9 specifically mentions that the Attorney can withdraw from the case, if he no longer believes in the merits of the case.

20. Moreover, the Attorney, Mr. Lee has already informed the Plaintiffs about his decision to withdraw from the case and the Plaintiffs have agreed to his withdrawal.

21. Furthermore, the Plaintiff, Mr. Harris is no more communicating with the Attorney, Mr. Lee. The Attorney tried to contact Mr. Harris on many occasions, but he neither answers phone call nor does he return messages.

22. Thus, this break-down in attorney-client communications and trust, and the fundamental disagreement between the Plaintiffs and their attorney, the undersigned Attorney will be unable to effectively and properly continue representing the Plaintiffs herein.

23. The Plaintiffs' Attorney also believes that this break-down in attorney-client communications and trust would result in an unreasonable financial burden on him as the Plaintiff Mr. Harris has stopped communicating with the Attorney.

ARGUMENTS

Local Civil Rule 5.1 (c) provides that an attorney who appears on behalf of a client shall not withdraw except by leave of court, or where arrangement is made for another attorney to substitute into the case. In its analysis of whether to permit a withdrawal at any point in the litigation, the Court must weigh four factors as follows:

1. The reason for which the withdrawal is sought;
2. Whether withdrawal will prejudice the parties;
3. Whether withdrawal will interfere with the administration of justice; and
4. The degree to which withdraw will delay the action.

McCuen v. First Judicial District of Pa. Probation Department, 99 F. Supp. 2d 565 (2000); Taylor v. Stewart, 20 F. Supp. 2d (1998).

Further, Pennsylvania Rule of Professional Conduct 1.16(b) provides that an attorney may withdraw from a case if one of the following circumstances applicable here exists:

“(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.”⁴

The requirements for withdrawal under this Rule - which are in the disjunctive - are met here. First, withdrawal can be accomplished without material harm to the Plaintiffs as the matter is not yet set for trial/hearing and looking at the procedural posture of the case; the Plaintiffs have enough time to obtain substitute counsel. Further, Plaintiffs have agreed to Mr. Lees' withdrawal from the case at bar. The withdrawal by the undersigned, as Plaintiffs' counsel in the instant matter, will not prejudice the parties and will not interfere with the administration of justice, as the matter is still in its initial stages and not yet set for hearing. Also, Plaintiffs have time to substitute the attorneys. Further, Plaintiffs' attorney believes that continuation of this suit, without first resolving the Plaintiffs' complaint pending with Copyright Office, would prejudice

⁴ Local Civil Rule 83.6(IV)(B) provides that this Court adopts the Pennsylvania Rules of Professional Conduct.

the Plaintiffs' rights, would unreasonably delay the proceedings and further increase the cost of this litigation. Finally, the withdrawal by the undersigned will have no impact and/or delay on the instant action as the matter is still in its initial stages.

Second is even more important, as stated above, there is a fundamental disagreement between the lawyer and Plaintiffs regarding continuation of this suit. Further, the Plaintiff, Mr. Harris's non-response to the undersigned's phone messages and emails evidences a break-down in attorney-client communication, trust and confidence, has resulted in to antagonistic relationship amongst them and has made it impossible for the Attorney to effectively and properly continue representing the Plaintiffs. Mere differences of opinion between an attorney and the client are not compelling reasons for withdrawal. *Hargrove v. Philadelphia*, 1995 WL 550441, at *1 (E.D.Pa. Sept. 15, 1995). However, the "development of an antagonistic relationship between lawyer and client is good cause for withdrawal." See *Wolgin v. Smith*, 1996 WL 482943, at *4 (E.D.Pa. Aug. 21, 1996). Such antagonistic relationship has developed between the Plaintiffs and the Attorney.

Thirdly, continued prosecution of this case in the absence of effective communication between lawyer and client would result in unreasonable financial burden on the Attorney, Mr. Lee. The undersigned Attorney is not sure if he would get paid for the services he will render in future to Mr. Harris.

Finally, the Attorney Retainer Agreement between the Plaintiffs and their Attorney specifically states that the Attorney may withdraw from the case if the attorney believes there is no merit in pursuing the case. The Attorney believes that the new developments in the case, as stated above, makes Plaintiffs' claim meritless and thus constitutes "other good cause for withdrawal", along with the earlier stated causes.

For all of the foregoing reasons, the undersigned's Motion should be granted in its entirety. James Lee, Esquire should be granted leave to withdraw. The action should be stayed thirty (30) days to allow Plaintiffs to find and retain substitute counsel.

Respectfully submitted,

By: *James Lee*
JAMES LEE, ESQUIRE
1500 Market Street,
12th Floor/East Tower
Philadelphia, Pa 19102

Attorney for Plaintiffs

Exhibit 1

Peter M. Vankevich
Head
Copyright Information Section

MEMO Copyright
United States Copyright Office

Library of Congress
101 Independence Avenue, SE
Washington, DC 20559-6300
202/707-0600 • fax 202/707-6859
pmva@loc.gov

TO: Mr. James Lee, Esq.

FROM: Charles Harris @H

RE: Travel To The Copyright Office in Wash. D.C.

DATE: January 4, 2011

PAGES: (1)

I met today with the head of the copyright office – Mr. Peter M. Vankevich.

I presented him with the written complaint, which included questions.

Mr. Vankevich was as astonished as I was. I laid out the documents which the defense attorney secured from them, and a copy of the finished booklet, and he couldn't understand it either.

He said they store materials off based and he was going to have to check to make certain that the booklet was not overlooked.

He assured me that what was in front of him was not the end of the matter, but he said he didn't want to give me any legal advice.

He assured me that he would speak to the people involved to get an explanation as to why the finished copy of the booklet was not copyrighted.

He also said he would send me a written answer to my complaint and response to the questions.

I told him I thought their behavior was actionable.



Receipt

Copyright Office
Library of Congress
101 Independence Avenue SE
Washington, DC 20559-6000



No. 1-8ZDN4X

Date: 1/4/2011 12:22:42 PM

Received

Form(s):

Deposit Count: 1

Piece Count:

Type of Deposit: Correspondence & certificate

Other Enclosures:

Title: Correspondence, Certificate copy TXU 937-707 & front page of "HOW AMERICA ELECTS HER PRESIDENTS".

of Additional Titles:

- Search Report
- Search
- Retrieval
- Correspondence
- Inspection
- Photocopies
- Additional Certificate

Priority:

Of Documents:

- Certification
 - Secure Test Exam
- Other:

Received From: Charles Harris
P.O. Box 18996

Phone: (215) 247-1620

Philadelphia, PA 19119
United States

Representing:

Phone:

Corresponding Id:

Fees	Method of Payment	Amount
No Fee: <input checked="" type="checkbox"/>	Check:	
Fee to be Determined: <input type="checkbox"/>	Money Order:	
Base Fee: \$	Deposit Account:	
Special Handling Fee: \$	Deposit Account Name:	
Secure Test Exam Fee: \$		
Total Due: \$0.00		

Total Payment: \$0.00

Notes

Received a copy of a letter regarding "UNIQUE PRODUCTS & SERVICES"; a copy of certificate TXU 931-707 and a copy of the book cover "HOW AMERICA ELECTS HER PRESIDENTS".

Received By: MBEA

Receipt of material is merely a preliminary step in the registration and/or recordation process. It does not imply that any final determination has been made in the case, or that the material is acceptable for registration.

Official action on an application for copyright registration or a document for recordation can be taken only after there has been a full examination of the claim following regular Copyright Office procedures. We are glad to discuss questions involving copyright registration on the telephone or in person-to-person conversations. However, all statements made during these exploratory discussions must be considered provisional, and are not binding either upon the applicant or upon the Office.

This receipt acknowledges delivery of the material to the Copyright Office on the date indicated. When multiple claims are submitted by or on behalf of the same remitter, however, only one receipt will be provided. If you are submitting multiple claims, only one title will appear on the receipt.

**UNIQUE PRODUCTS & SERVICES
P.O. BOX 18996
PHILADELPHIA, PA 19119**

January 4, 2011

**U.S. COPYRIGHT OFFICE
CAPITAL HILL
101 INDEPENDENCE SQUARE, S.E.
WASHINGTON, D.C.**

To whom it may concern:

I am here in the United States Copyrighting Offices in Washington, D.C. to file a formal complaint about the mismanagement of my 1960 copyrighted booklet, "HOW AMERICA ELECTS HER PRESIDENTS". This booklet is now apart of a plagiarism lawsuit.

To my shock, I have discovered that is office, (copyrighting), did not copyright my finished booklet in the year 2000, but you copyrighted the accompanying rough draft! How could such a thing happen? What this office has on file are only the composing pages! How could this happen? I personally packaged and sent the raw material and the finished booklet myself. If you received one, you received the other. What did you do with the finished booklet, they came together?

Something is very wrong here! For ten years I have been selling 'HOW AMERICA ELECTS PRESIDENTS' with the comfort that I had U.S. Government copyright protection, only to discover that my scraps are protected, not my booklet! The rough draft doesn't even contain all the finish booklet material! Why would anyone choose a rough draft over a finished work? If there was a question about one or the other, I am sure this office would have contacted me – so Mr./Ms. Copyright, what happened?

Questions

1.
Why didn't this office copyright the finished product rather than the rough draft?
2.
What happened to my finished booklet, HOW AMERICA ELECTS HER PRESIDENTS?
3.
Is there / was there a purpose for this mix up?
4.
Is there a reason why this copyrighting office is being so kind, considerate and inclusive to the defense attorney? It appears that everyone in this office including the janitor is involved in compiling, notarizing the defense attorney's request for information.