

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :  
 :  
 vs. : No. CR-2134-2013; CR-2148-2013  
 : CR-45-2014; CR-547-2015;  
 DAWN BALL, : CR-1741-2015; CR-2063-2015  
 Defendant :

**OPINION AND ORDER**

Before the Court is a motion filed by Jerry Lynch, Esquire (“counsel”) for leave to withdraw as court appointed counsel for Defendant Dawn Ball. Unfortunately, this motion is consistent in type with several others filed by previously appointed counsel. Ms. Ball has systematically worked her way through a large portion of the available members of the Lycoming County Criminal Bar.

This motion was filed on December 16, 2015 in all of the above-referenced cases. The cases can be separated into two different groups on the basis of their present procedural posture. Group One consists of Information Numbers 2134-2013, 2148-2013, 45-2014 and 547-2015. Group Two consists of Information Numbers 1741-2015 and 2063-2015.

The Group One cases are all presently on appeal. Defendant was sentenced on December 1, 2015. The Commonwealth’s motion to reconsider was granted in part on December 15, 2015. The Commonwealth filed an appeal to the Superior Court on December 29, 2015.

The Group Two cases are presently scheduled for pretrials, call of the list, potential jury selection and trial. Call of the list for case 1741-2015 is set for February 16, 2016 while the case under 2063-2015 is set for March 22, 2016.

The hearing on counsel's motion was held on February 3, 2016. Counsel and Defendant both testified.

Counsel testified that Defendant and he vehemently disagree with respect to counsel's involvement in a civil matter involving Defendant and third parties. Defendant contends that counsel has acted as counsel in the matter without being authorized to do so, "dropped the case" against all of the defendants without authorization, failed to keep her informed of the status of the matters and has mishandled settlement proceeds. Defendant openly accuses counsel of "lying" and engaging in professional misconduct.

Counsel denies Defendant's contentions and argues that, a result of those contentions, irreconcilable differences have arisen between the parties making his continued representation of Defendant impossible. Counsel contends that Defendant has threatened him with a lawsuit, a professional misconduct complaint, and an ethics complaint. Counsel contends as well that Defendant has made numerous disruptive phone calls to his office interfering with the efficient workings of his office as well as his relationship with other clients.

The first issue concerns this Court's jurisdiction to decide the motion with respect to Group One, the cases on appeal. Counsel contends that this Court has jurisdiction because the motion was filed before the appeal was taken. Counsel has not, however, provided any legal authority whatsoever to support his position.

Rule 1701 of the Pennsylvania Rules of Appellate Procedure governs what matters a trial court may consider following the filing of an appeal. Generally, once an

appeal is taken, the trial court may no longer proceed further in the matter. PA. R. APP. P. 1701 (a); *Commonwealth v. Bishop*, 829 A.2d 1170, 1172 (Pa. Super. 2003).

The trial court may, however, take action in matters “otherwise ancillary to the appeal.” PA. R. APP. P. 1701 (b) (1). It appears however, that this language has been interpreted to apply only to technical, non-substantive, incidental matters. *Abrams v. Uchitel*, 806 A.2d 1, 8 (Pa. Super. 2002); *Pellizzeri v. Bureau of Professional and Occupational Affairs*, 856 A.2d 297, 302 (Pa. Cmwlth. 2004). This Court cannot conclude that representation by an attorney after an appeal has been filed is a non-substantive matter or incidental to the appeal.

Accordingly, the Court will DENY counsel’s motion with respect to the Group One cases, because this Court is without jurisdiction to act on said motion. This ruling is without prejudice for counsel to file a motion to withdraw with the Pennsylvania Superior Court.

With respect to the Group Two cases, those presently placed on the trial list, while an indigent defendant is entitled to appointed counsel, that right is not absolute. *Commonwealth v. Cook*, 597 Pa. 572, 952 A.2d 594, 617 (2008).

Counsel for defendant may withdraw his appearance by leave of Court. Pa. R. Cr. P. 120. Leave to withdraw shall be granted unless the interests of justice otherwise require. *Commonwealth v. Qualls*, 785 A.2d 1007 (Pa. Super. 2001). A request to withdraw may be based upon the conduct of the defendant which “renders it unreasonably difficult for appointed counsel to carry out his duties effectively.” *Jester v. Pa. Board of Probation and*

*Parole*, 595 A.2d 748, 751 Pa. 1 (Pa. Cmwlth. 1991).

Counsel for defendant has a plethora of duties toward his client, the defendant, which include but are not limited to competency, diligence, communication, compliance with reasonable requests, to avoid any conflict of interest, and to avoid certain business transactions 204 Pa. Code § 81.4, Rules of Professional Conduct, Rules 1.1, 1.3, 1.4, 1.6, 1.7, 1.8.

In this particular case, the Court concludes that there are substantial reasons in support of counsel's motion. Clearly there are irreconcilable differences. The relationship between the parties has deteriorated such that it is impossible for counsel to continue to represent Defendant. Indeed, the Court could not imagine counsel being able to fulfill his ethical obligations to his client while under the threat of a civil lawsuit or professional misconduct complaint.

In light of the fact that the Court will be appointing new counsel to represent Defendant, and in light of the fact that Defendant has proven to be a very difficult client, the Court will sua sponte continue both cases to the May 10, 2016 pretrial list with call of the list set for May 17, 2016 and the trial term set between June 6, 2016 and June 24, 2016. Because this continuance is not attributable to any conduct by the Commonwealth, the time between the filing of counsel's motion to withdraw to the call of the list on May 17, 2016 shall be excluded for Rule 600 purposes.

Defendant is advised that she must be present for her call of the list on **May 17, 2016 at 8:30 a.m. in Courtroom No. 1** of the Lycoming County Courthouse or a bench

warrant will be issued for her arrest. The cases are removed respectively from the February and March calls. Defendant need not be present on February 16 or March 22, 2016 for the calls.

**ORDER**

AND NOW, this 16<sup>th</sup> day of February 2016, counsel's Motion to Withdraw with respect to Case No's. 2134-2013, 2148-2013, 45-2014 and 547-2015 is **DENIED**. Counsel's Motion to Withdraw with respect to Case No's. 1741-2015 and 2063-2015 is **GRANTED**. These cases are continued sua sponte to the May 10, 2016 pretrial. Call of the list is scheduled **for May 17, 2016 at 8:30 a.m. in Courtroom No. 1** of the Lycoming County Courthouse. Defendant must be present or a bench warrant shall be issued for her arrest. The trial term is between June 6, 2016 and June 24, 2016. This time shall run against Defendant for Rule 600 purposes. A copy of this Order shall be forwarded to Defendant at 4648 Steuben Road, Bethlehem, PA 18020. A copy of this Order shall also be provided to the Adult Probation office who through contact with the Pennsylvania Board of Probation and Parole shall call the Defendant and advise her of the contents of this Order.

Paul Petcavage, Esquire, 200 Pine Street, Suite 800, 2<sup>nd</sup> Floor, Williamsport, PA 17701 (570) 506-4390, is appointed as counsel for the Defendant. Attorney Petcavage shall be paid at the rate of \$75.00 per hour.

By The Court,

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Marc F. Lovecchio, Judge