

FILED

DATE: 1/6/13 TIME: am/pm

By: CW
CLERK, FSM SUPREME COURT
KOSRAE
TRIAL DIVISION

Stephen V. Finnen
A Law Corporation
P.O. Box 1490
Kosrae, FM 9694
Phone: (691) 325 2327
Fax: (691) 325 2321

ATTORNEYS FOR DEFENDANT: TROPICAL WATERS KOSRAE, INC., CLAUDE PHILLIP AND RONALD BICKETT.

IN THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA
KOSRAE STATE-TRIAL DIVISION

FSM DEVELOPMENT BANK,

Plaintiff,

vs.

TROPICAL WATERS KOSRAE, INC.,
CLAUDE PHILLIP and RONALD BICKETT,

Defendants

CIVIL ACTION NO. 2012-2003

MOTION TO WITHDRAW
AS COUNSEL OF RECORD

MOTION TO FILE BY FACSIMILE

The undersigned counsel for defendants hereby moves the Honorable Court pursuant to Rule 1.6 of the American Bar Association's Model Rules of Professional Conduct (b) (4), (5) and (6) for an order permitting counsel to withdraw as attorney of record in this matter. This motion also contains a motion to enlarge time to allow defendants an opportunity to find new counsel and to respond to any pending discovery obligations. This motion is supported by the attached affidavit of Stephen V. Finnen, and the Memorandum of Points and Authorities.

The defendants, by and through counsel, hereby move for an order of the Court to file this motion by facsimile. Pursuant to General Court Order 1990-1, plaintiffs move the Court to allow the Court to Motion to Withdraw by facsimile on the basis that the

...not received at the time of filing of the complaint. Filing of the complaint would not be received
briefly

MEMORANDUM OF POINTS AND AUTHORITIES

The applicable rule provides in part as follows:

Rule 1.16 DECLINING OR TERMINATING REPRESENTATION

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effects on the interests of the client, or if

(4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services, and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled

(5) the lawyer's continued presence on the case would create a financial burden on the client that has become unreasonably difficult for the client, or

(6) any other good cause for withdrawal exists.

The attorney initially represented three clients, Ron Bickett, Claude Phillip and Tropical Waters Kosrae, Inc. Claude Phillip passed away in late 2012. His wife Betty Phillip has applied for the position of administrator of his estate. Initially representation was for purposes of restructuring a corporate loan and assisting in negotiations with its creditors.

On or about March 22, 2012 a complaint was filed by the FSM Development

...the complaint was responded to by initially filing a motion to dismiss then filing an answer.

The reason for seeking withdrawal is a failure of the clients to respond to numerous requests for payment of fees. Fees are still outstanding that were billed in June, 2012.

Additionally, it appears settlement negotiations cannot be completed. The Development Bank is actively pursuing this litigation, with depositions scheduled in late February, along with a hearing on pending motions. This scheduling would require Counsel to fly to Kosovo for six days. Counsel has made one previous trip to Kosovo in the amount of \$2,000. Any court payments made to the court by this trip has not been reported.

It would be a hardship on this office to finance the cost of travel without payment along with 60 days in Kosovo without payment. Further, this office will require Counsel to travel to Kosovo for trial and other court appearances. The return agreement entered into requires an initial return. When that returner was exhausted, no new returner was deposited. Some monthly payments were made but a significant amount is in arrears. This office cannot afford to pursue this case any longer, and must seek withdrawal.

Additionally, there are other interrelated matters that would require even more attorney time. The corporate defendant may need to file for bankruptcy in a separate proceeding, and other creditors may sue these same defendants. This counsel is unable to handle any of these matters, and so should withdraw from the current case. A Motion to Withdraw, Adverse Effect-Motion to Enlarge Time

and an attorney may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client.

Currently discovery has been served on defendants. The responses are outstanding but an enlargement has been granted to respond to February 15, 2013.

Counsel has not received responses from the clients. This motion also includes a motion to enlarge time for the defendants to seek new counsel and respond. The same is true concerning the late February depositions.

A motion is scheduled to be argued on February 26, 2013, on a pre-judgment writ attachment. This motion is fully briefed. New counsel will be needed to argue the motion.

No trial dates are set, and there are no other dates scheduled in this case.

The motion to enlarge time is at this time with minimal burden on the clients.

Unreasonable Financial Burden

Continuing the representation without payment will result in an unreasonable financial burden on the attorney. This attorney has salaries, rent, communications expenses, and utilities to pay, in order to maintain and run a law office.

Travel to Kosrae is an additional expense. This office has to go to Kosrae solely for this matter, and cannot apportion costs. With the current flight schedule all trips to Kosrae must last either five or six days. This is a substantial time away from the office for no flight, and without compensation it is an unreasonable burden.

Failure to Substantially Fulfill an Obligation Regarding Lawyer's Services.

The clients have been contacted via communications both by email and on the telephone advising the clients of the necessity of payment. Some payments were made, but the billing remains unpaid for part of June, and the next six months. January billing is now going out. Despite demand the back billing has not been paid, and no retainer for future billing deposited.

TYWKI is no longer operating and does not appear capable of paying these costs.

This counsel cannot afford to continue representation when the debts for fees and travel costs will increase substantially.

Other Good Cause.

Rule 7.19(b)(5) authorizes withdrawal when other good cause has been shown. Other good cause includes other causes. This office cannot afford to represent clients without payment, but there is even additional cause when the case is in Kosrae. It is expensive to travel to Kosrae with the current flight schedule, necessitating five or six day stays. This requirement is a unique burden solely for cases set in Kosrae.

Additionally, the position of the corporate defendant is perilous. Other creditors may file collection actions against the corporation and the individual defendants. Additionally, the corporation's interests may be protected by a bankruptcy filing.

However, this counsel has not accepted representation on these matters, and cannot

represent the corporate defendant under the circumstances.

This counsel is unable to continue to represent the corporate defendant and will withdraw from this matter.

MOTION TO ENLARGE TIME

Rule 5(b) of the FSM Rules of Civil Procedure states:

(b) **Enlargement.** When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specific time, the court for cause shown may at any time in its discretion (1) with or without notice order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order; or (2) upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect, but it may not extend the time for taking any action under rules 52(b), 59(b), (d) or (e), and 60(b), except to the extent and under the conditions stated in them.

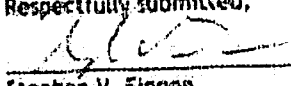
...to be granted to enhance the time to respond to discovery questions to
...the hearing date on February 16, 2013. The enlargement should be
adequate to allow time for the retention of new counsel.

CONCLUSION

The undersigned seeks to be allowed to withdraw from representation in this
case. For the foregoing reasons it is requested that this motion to withdraw be granted.

Dated: 2-6-13

Respectfully submitted,



Stephen V. Finner
A Law Corporation
Attorneys for Defendants