

FILED

NORTH CAROLINA DEC 16 AM 10:34

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
07 CVS 19854

WAKE COUNTY WAKE COUNTY, C.S.C.

BY \_\_\_\_\_

GLENN HAGELE, )  
)  
Plaintiff, )  
)  
v. )

LAURANELL BURCH a/k/a NELL )  
BURCH, )  
)  
Defendant )

LAURANELL BURCH, )  
)  
Counter-Plaintiff, )

v. )

GLENN HAGELE and COUNCIL FOR )  
REFRACTIVE SURGERY QUALITY )  
ASSURANCE d/b/a USAEYES.ORG, )  
)  
Counter-Defendants. )

**MOTION FOR LEAVE TO  
WITHDRAW AS COUNSEL**  
(Expedited Hearing  
Requested)

Jonathan D. Sasser, Thomas H. Segars, and Ellis & Winters LLP move the Court, pursuant to Rule 16 of the General Rules of Practice for the Superior and District Courts, for leave to withdraw as counsel for Plaintiff/Counter-Defendant Glenn Hagele. In support of this Motion, movants state the following:

1. Grounds exist under Rules of Professional Conduct 1.16(b)(3), 1.16(b)(4), and 1.16(b)(5) for undersigned counsel to withdraw from the representation of Mr. Hagele. See N.C. R. Prof'l Conduct 1.16(b)(3), 1.16(b)(4) & 1.16(b)(5) (1997). These grounds provide justifiable cause for undersigned counsel's withdrawal from the representation of Mr. Hagele.

2. Soon after discovering the cause for this Motion, undersigned counsel advised Mr. Hagele of their intent to file this Motion and have explained the reasons for it. The undersigned counsel asked Mr. Hagele for his assent to the termination of the representation so that this Motion could be made in accordance with Rule of Professional Conduct 1.16(b)(2). See N.C. R. Prof'l Conduct 1.16(b)(2) (1997). As of the time of filing, Mr. Hagele opposes this Motion, and takes the position that no Wake County Superior Court Judge should decide it (on grounds that one of the undersigned counsel is the spouse of a Wake County District Court Judge).

4. Through Defendant/Counter-Plaintiff Luranell Burch's attorneys, undersigned counsel informed Ms. Burch of their intent to file this Motion, as well the Motion's basis. Ms. Burch's attorneys take the position that they cannot determine whether they oppose or consent to the motion until they are made aware of a "fuller factual basis" for the motion by attending a hearing in the matter, which they ask be calendared before the Honorable Donald Stephens.

5. Movants firmly believe that a hearing on the full factual basis of this motion to withdraw would not be in Mr. Hagele's best interest – particularly if attended by Ms. Burch's counsel. Movants take no position as to which judge should decide the Motion, but note that Ms. Burch's position and Mr. Hagele's are inconsistent.

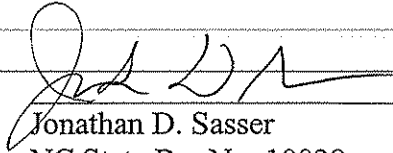
6. At this time, no substitute counsel for Mr. Hagele has been identified. Undersigned counsel is advised that, in the event this motion is allowed, Mr. Hagele intends to proceed pro se in this matter. Mr. Hagele's current address is: Mr. Glenn Hagele, Jr., 8543 Everglade Dr., Sacramento, California 95826.

7. Movants request an expedited decision on this Motion.

WHEREFORE, movants Jonathan D. Sasser, Thomas H. Segars, and Ellis & Winters LLP request that the Court grant this Motion and permit them to withdraw as counsel for Plaintiff/Counter-Defendant Glenn Hagele. A proposed order accompanies this motion.

This 14th day of December, 2009.

ELLIS & WINTERS LLP



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Attorneys for Glenn Hagele

CERTIFICATE OF SERVICE

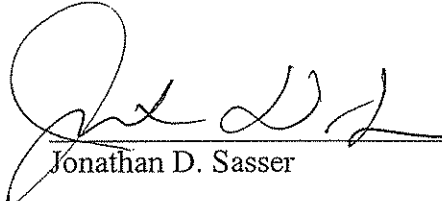
The undersigned hereby certifies that copies of the foregoing were served on counsel for the parties as listed below by depositing a copy thereof in the United States mail; postage prepaid, first class, and by delivering a copy thereof by electronic e-mail transmission, as follows:

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Mr. Glenn Hagele, Jr.  
8543 Everglade Dr.  
Sacramento, California 95826  
Facsimile:

This the 14 day of December, 2009.

  
Jonathan D. Sasser

## **27 NCAC 02 RULE 1.16 DECLINING OR TERMINATING REPRESENTATION**

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of law or the Rules of Professional Conduct;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client; or
- (2) the client knowingly and freely assents to the termination of the representation; or
- (3) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent; or
- (4) the client insists upon taking action that the lawyer considers repugnant, imprudent, or contrary to the advice and judgment of the lawyer, or with which the lawyer has a fundamental disagreement; or
- (5) the client has used the lawyer's services to perpetrate a crime or fraud; or
- (6) 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; or
- (7) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- (8) the client insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law; or
- (9) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

### **Comment**

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. *See* Rules 1.2(c) and 6.5. *See also* Rule 1.3, Comment [4].

#### **Mandatory Withdrawal**

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

#### **Discharge**

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.