

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,
Plaintiff,

v

Case No. 15-20382

Hon. Victoria A. Roberts

PAUL NICOLETTI,
Defendant.

MOTION TO WITHDRAW AS COUNSEL

Defense counsel John Minock, requests that this Court grant his motion for the following reasons:

1. Defendant is charged in a four count indictment with one count of conspiracy to commit bank fraud and three counts of aiding and abetting bank fraud.
2. Defense counsel is appointed pursuant to the Criminal Justice Act.
3. There has been a breakdown of the attorney client relationship such that counsel should not represent Defendant.
4. Defendant is an attorney. Counsel and Defendant are completely at odds regarding how the case should be handled, including matters of trial strategy, such as what theory to pursue and whether certain critical evidence should be presented, including expert testimony.
5. Defendant has stated he does not believe that counsel has a sufficient

understanding of the subject matter of the case, that counsel is not prepared and has not prepared properly, and that counsel should have requested the assistance of a second court appointed lawyer to represent Defendant.

6. The breakdown of the relationship is of such a strong nature that counsel cannot and should not represent Defendant.

WHEREFORE, counsel requests that the Court permit him to withdraw and appoint new counsel for Defendant.

Dated: April 22, 2017

s/John Minock
Attorney for Defendant
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BRIEF IN SUPPORT OF MOTION TO WITHDRAW AS COUNSEL

John Minock
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STATEMENT OF ISSUE PRESENTED

- I. SHOULD COUNSEL BE PERMITTED TO WITHDRAW WHERE THERE HAS BEEN A CLEAR BREAKDOWN IN THE ATTORNEY-CLIENT RELATIONSHIP?**

LEADING AUTHORITIES

United States Constitution, Amendment VI

Wilson v. Mintzes, 761 F2d 275, 278-280 (6th Cir 1985)

I. COUNSEL SHOULD BE PERMITTED TO WITHDRAW WHERE THERE HAS BEEN A CLEAR BREAKDOWN IN THE ATTORNEY-CLIENT RELATIONSHIP.

Defendant is an attorney. Counsel and Defendant are completely at odds regarding how the case should be handled, including matters of trial strategy, such as what theory to pursue and whether certain critical evidence should be presented, including expert testimony.

In addition, Defendant has stated he does not believe that counsel has a sufficient understanding of the subject matter of the case, that counsel is not prepared and has not prepared properly, and that counsel should have requested the assistance of a second court appointed lawyer to represent Defendant.

The breakdown of the relationship is of such a strong nature that counsel cannot and should not represent Defendant.

A criminal defendant is entitled to a reasonable opportunity to be represented by an attorney with whom he/she has a relationship of trust and cooperation. Where there has been a breakdown of the attorney-client relationship, an attorney should be permitted to withdraw. *Wilson v. Mintzes*, 761 F2d 275, 278-280 (6th Cir 1985); *Linton v Perini*, 656 F2d 207, 209 (6th Cir 1981); U.S. Const., Am. VI.

Such a breakdown occurs where there is a legitimate difference of opinion between a defendant and appointed counsel regarding the defense theory and trial

strategy. *People v. Charles O. Williams*, 386 Mich 565, 574; 194 NW2d 337 (1972).

In addition, Michigan Rule of Professional conduct 1.116(b)(3) provides that a lawyer may withdraw from representation if the client insists on pursuing a course of action which the lawyer considers imprudent.

While appointment of new counsel might cause some adjournment of the trial date, the file is organized and the undersigned can bring new counsel up to speed relatively quickly. In addition, the paralegal working on the case is herself an experienced and capable lawyer who is familiar with the case and the discovery and, if new counsel chooses, could remain on the case to assist in preparation.

Because of the real and substantial breakdown in the attorney-client relationship which has occurred in this case, the Court should grant counsel's motion to withdraw as attorney of record for the defendant.

Dated: April 22, 2017

s/John Minock
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CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2017, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to the attorneys of record.

s/John Minock