

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2008-031021-001 DT

03/08/2011

HON. SALLY SCHNEIDER DUNCAN

CLERK OF THE COURT
L. Porter
Deputy

STATE OF ARIZONA

JUAN M MARTINEZ

v.

JODI ANN ARIAS (001)

KIRK NURMI
VICTORIA ELISABETH WASHINGTON
JAMES LEO LOGAN
DANIEL B PATTERSON

CAPITAL CASE MANAGER
VICTIM SERVICES DIV-CA-CCC

MINUTE ENTRY

9:10 a.m.

State's Attorney: Juan Martinez
Defendant's Attorney: Kirk Nurmi and Victoria Washington
Defendant: Present
Court Reporter: Scott Kindle

Dan Patterson is present on behalf of the Public Defender's Office.

James Logan is present on behalf of the Office of Public Defense Services.

Discussion is held regarding withdrawal of Attorney Kirk Nurmi.

9:25 a.m. Court stands in recess.

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9:33 a.m. Court reconvenes with respective counsel and the Defendant is present.

Court Reporter, Scott Kindle is present.

Defendant addresses the Court.

LET THE RECORD REFLECT the Court shall not consider withdrawal of Attorney Kirk Nurmi until a written motion is filed and is set for oral argument.

IT IS ORDERED ordering the Office of Public Defense compensate Attorney Kirk Nurmi for work completed in this matter at the first chair rate.

IT IS ORDERED affirming Capital Case Management Conference set for **March 21, 2011 at 8:30 a.m.** in this Division.

LAST DAY: 09/02/2011

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Orders 2010-117 and 2011-10 to determine their mandatory participation in eFiling through AZTurboCourt.

9:37 a.m. Matter concludes.

LATER:

The Grand Jury returned an Indictment charging Defendant with First Degree Murder on July 9, 2008. The State filed its Notice of Intent to Seek the Death Penalty on October 31, 2008, followed by an Amended Notice on November 6, 2008.

On August 10, 2009, the Office of the Legal Defender withdrew from representation of the Defendant. (ME 8/10/09, filed 8/17/09.) On August 18, 2009, the Court appointed Victoria Washington and Kirk Nurmi as defense counsel for all further proceedings. (ME 8/18/09, filed 8/26/09). On February 25, 2011, Mr. Nurmi informed the Court that he is leaving the Office of the Public Defender. (ME 2/25/11, filed 3/2/11.) At that time, the Court questioned Mr. Nurmi regarding his belief that leaving his employment with the Office of the Public Defender relieved him of his responsibilities as first-chair defense counsel in this case. (*Id.*)

To date, Mr. Nurmi has not filed a Motion to Withdraw, nor has another attorney filed a Notice of Substitution. The Court has been informed by email communication that the Office of the Public Defender intends to assign Wesley Peterson to the case in place of Mr. Nurmi. The

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Court notes that Mr. Peterson is currently first chair counsel in *State v. Eric Dominguez*, CR 2010-106775, which is set for trial on July 12, 2011, with a last day of August 16, 2011. The Court has also been informed by James Logan of the Office of Public Defense Services that he will contract with Mr. Nurmi for Defendant's representation at the standard contract rate for capital cases.

Trial in this case is set for August 2, 2011, and Defendant has indicated that she wishes to go to trial on that date and Defendant strenuously objects to Mr. Nurmi withdrawing from the case.

The Court declines to allow Mr. Nurmi to withdraw from his representation of the Defendant in this matter, or to allow Mr. Peterson to substitute as counsel. Once counsel is appointed to a case, he "shall continue to represent [his client] in all further proceedings in the trial court, . . . unless the court permits him . . . to withdraw." Rule 6.3(b), Ariz.R.Crim.P.

Once a case is set for trial, counsel may not withdraw except upon motion providing the name and address of another attorney, along with a statement from that attorney stating that he or she has been advised of the trial date and will be prepared for trial. Rule 6.3(c). No such motion or statement has been filed in this case.

When a proper Motion to Withdraw is filed, the trial court must consider "potential prejudice to the judicial process, counsel, and the defendant." *Riley, Hoggatt & Suagee, P.C. v. Riley, State of Arizona and Kempton, Real Parties in Interest*, 165 Ariz. 138, 140, 796 P.2d 940, 942 (App. 1990). Here, consideration of these factors militates against allowing Mr. Nurmi to withdraw. The potential prejudice to the judicial process and to the Defendant are apparent, given the complexity of the case, the amount of time Mr. Nurmi has already spent working on the case, the looming trial date, Defendant's wish to proceed to trial in August, and the fact that Mr. Peterson will begin another capital trial three weeks before this matter is set for trial. On the other hand, there is no real apparent prejudice to Mr. Nurmi, who will be paid at the contract rate for his work on this case. While Mr. Nurmi may not wish to remain on the case, that is not the most important factor that the Court must consider.

The Court also notes that Ethical Rule 1.16 (Rule 42, Rules of the Supreme Court), states that a lawyer may withdraw from representation of a client if, among other reasons, "(1) withdrawal can be accomplished without material adverse effect on the interests of the client," "(6) the representation will result in an unreasonable financial burden on the lawyer . . .," or "(7) other good cause for withdrawal exists." To date, none of these conditions have been shown to exist. First, as noted above, allowing Mr. Nurmi to withdraw at this stage in the proceedings would have a "material adverse effect" on Defendant's interests. Second, Mr. Nurmi will be paid the standard contract rate for his work on this case. Therefore, requiring Mr. Nurmi to keep

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this case will not “result in an unreasonable financial burden” on him. Third, no other “good cause for withdrawal” has been shown to exist.

Even if good cause did exist, Mr. Nurmi would be obligated to continue representation absent approval of withdrawal by the Court. “When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.” Ethical Rule 1.16(c). Once a lawyer has been appointed to represent a client, “withdrawal ordinarily requires approval of the appointing authority.” Comment (2003 Amendment) to Rule 1.16.