

IN THE CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

STATE)	
)	No.
vs.)	
)	Judge
)	
)	

FILED: _____ DEPUTY CLERK: _____

MOTION TO DECLINE [WITHDRAW FROM] COURT’S APPOINTMENT

Comes now, counsel for _____, and move this Court pursuant to the Fourth, Sixth and the Fourteenth Amendments to the United States Constitution, and Article 1, Section 2, 4, 13, and 24 of the Louisiana Constitution, Louisiana Rules of Professional Conduct Rules 1.1, 1.7, 1.16 and other applicable law, to allow undersigned counsel to decline/withdraw from this Court’s appointment of undersigned counsel to [CLIENT’S] case.

In support, counsel states as follows:

1. The Accused is charged with [XXX]. If convicted, the Accused faces [XXX].
2. At arraignment, the Accused was determined to be indigent by this Court. Instead of appointing the public defender’s office to represent the Accused, this Court appointed undersigned counsel to the Accused on [DATE]. The current funding stream for public defense, heavily reliant on fines, fees and costs, is inadequate and unreliable, and as result, the public defender’s office has entered into restriction of services and does not have resources or capacity to represent [CLIENT].
3. It is the responsibility of the State of Louisiana to provide competent and adequate representation to poor people charged with a crime and facing a loss of their liberty. La. Const. Art. I sec. 13; *Gideon v. Wainwright*, 372 U.S. 335 (1963).
4. Undersigned counsel is an attorney in private practice and spends XXX% of her practice handling criminal cases. *[Detail here the nature of your practice: primary area of practice, how you generate revenue, number of criminal trials conducted, whether you’ve handled this type of case and if so, how many and how long ago; etc.]*
5. Counsel has overhead expenses to maintain and will necessarily forgo other income in order to represent [CLIENT].
6. Louisiana Rule of Professional Conduct Rule 1.1 states that a lawyer “shall provide

- competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”
7. Members of the Louisiana State Bar have a responsibility to assist in providing pro bono public service, however, an attorney may seek to decline or withdraw from an appointment by a Court if good cause exists. *See* La. Rule of Prof. Conduct, Rules 6.1 and 6.2. Good cause exists if the lawyer can not handle the matter competently under Rule 1.1.
 8. “To provide quality representation, counsel must be familiar with the substantive criminal law and the law of criminal procedure and its application.” *NLADA Performance Guidelines for Criminal Defense Representation, 1.2*. Additional, “[b]efore agreeing to act as counsel or accepting appointment by a court, counsel has an obligation to make sure that they have available sufficient time, resources, knowledge and experience to offer quality representation to a defendant in a particular matter. If it later appears that counsel is unable to offer quality representation in the case, counsel should move to withdraw.” *NLADA Performance Guidelines for Criminal Defense Representation, 1.3*. [4]
 9. *[Describe here why you believe you are not competent to represent the Accused in this matter: very limited experience handling criminal cases; have never handled the type of case at hand; have not participated in or received recent, contemporary training or continuing legal education on substantive criminal law and procedure, why you do not have the time and resources to study this relatively novel field to prepare an adequate defense for the Accused; etc.]*
 10. In addition to competence, additional good cause exists to decline/with draw from this appointment: conflict of interest and this assignment will be unreasonably burdensome and will impose untenable financial sacrifice to counsel, his private practice and family.
 11. Undersigned counsel faces a conflict of interest in accepting this appointment and representing the Accused in this case. Rule 1.7 of the Louisiana Code of Professional Conduct states that “a lawyer shall not represent a client if the representation involved a concurrent conflict of interest. A concurrent conflict of interest exists if:...there is

significant risk that the representation of one or more clients will be materially limited...by a personal interest of the lawyer.” Additionally, Rule 1.7 states that a conflict exists when “representation of one client will be directly adverse to another client.”

12. It is unquestionable that, if forced to continue representing the Accused in this matter before this Court, undersigned counsel’s representation will “be materially limited” by counsel’s distraction from this case due to financial obligations incurred by this case to counsel’s solo practice, by counsel’s need to engage fully in other paying work to support his legal practice and his family, and by counsel’s lack of availability to work the many hours required to adequately and effectively represent the Accused given counsel’s inexperience in these types of cases and matters.
13. Louisiana Rule of Professional Conduct Rule 1.16 states that a lawyer “shall withdraw from the representation of a client if: (1) the representation will result in violation of the rules of professional conduct or other law.” Rule 1.16 also states that a lawyer “may withdraw from the representation of a client if....(6) the representation will result in an unreasonable financial burden on the lawyer.” Clearly, both rules unquestionably apply to counsel in this case. *See In re Callout*, 800 So. 2d 367 (La. 2001) (holding that the baseline sanction for failing to withdraw when conflict of interest is present is suspension); *State v. McNeal*, 594 So. 2d 876 (La. 1992) (granting motion to withdraw from representation on ground of conflict of interest granted).
14. The State of Louisiana has withdrawn from its constitutional obligation to fund the defense in this case. The Accused is poor and he is entitled to representation under both federal and Louisiana state constitutions. It would be abusive and oppressive to deny counsel’s request to decline/withdraw from this appointment when this appointment will come at a great personal cost that which federal and state constitutions require the State of Louisiana to provide. In addition, conscription of counsel to this case will also represent an uncompensated government taking, banned by both the Louisiana and federal constitutions.
15. Rules of Professional Conduct are black letter law in Louisiana. *Walker v. DOT*, 817 So. 2d 57 (La. 2002); *Leenerts Farms, Inc. Rogers*, 421 So. 2d 216 (La. 1982). the

Louisiana Rules of Professional Conduct dictate that counsel must decline/withdraw from appointment.

WHEREFORE undersigned counsel moves to decline/withdraw from his representation.

Respectfully Submitted,

Certificate of Service

I hereby certify that I have caused to be served by hand delivery in open court a copy of the foregoing document upon the prosecution on this the day of filing.

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ORDER

Having considered the forgoing MOTION TO DECLINE [WITHDRAW FROM] COURT'S APPOINTMENT, it is hereby ORDERED that the Motion is _____.

SIGNED this _____ day of _____, 2016.

Judge