

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE LUIS RODRIGUEZ-RIVERA,

Defendant.

CRIMINAL ACTION

No. 04-20091-CM

ORDER

On October 30, 2006, this court sentenced defendant to a term of 235 months imprisonment. On November 6, 2006, defendant filed a Notice of Appeal through his attorney, Eduardo N. Lerma Sr. Mr. Lerma also filed a Motion to Withdraw as Counsel (Doc. 104). Mr. Lerma's motion is not properly before this court. Tenth Circuit Rules make it clear that this court lacks authority to grant Mr. Lerma's motion. Tenth Circuit Rules 46.1, 46.3, and 46.4 all indicate that an attorney who has entered an appearance with the Tenth Circuit may not withdraw without the Tenth Circuit's permission. Tenth Circuit Rule 46.3 specifically states:

Trial counsel must continue to represent the defendant until either the time for appeal has elapsed and no appeal has been taken or this court has relieved counsel of that duty. An attorney who files a notice of appeal in a criminal case or a postconviction proceeding under 28 U.S.C. § 2254 or § 2255 has entered an appearance in this court and may not withdraw without the court's permission.

Mr. Lerma should raise his request with the Tenth Circuit. *See United States v. Montero-Sanchez*, No. 02-20020-01-KHV, 2002 WL 31190131, at *2 (D. Kan. Sept. 18, 2002); *United States v. Telman*, No. 92-40034-03-SAC, 1993 WL 500828, at *2 (D. Kan. Nov. 19, 1993).

The court also notes that in defendant's Notice of Appeal, he requests to proceed *in forma*

pauperis. If defendant wishes to proceed *in forma pauperis*, he should reference and comply with any applicable rules, including Fed. R. App. P. 24.

IT IS THEREFORE ORDERED that Mr. Lerma's Motion to Withdraw as Counsel (Doc. 104) is denied.

Dated this 7th day of November 2006, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge