

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

CHARLOTTE K. WHITFIELD,)
)
 Plaintiff,)
v.) Case No. 08-2085-CM
)
 BRUCE R. CLIPPINGER, et al.,)
)
 Defendants.)

ORDER

This case comes before the undersigned U.S. Magistrate Judge, James P. O’Hara, on the motion of John B. Gage, II, to withdraw as attorney of record for the plaintiff, Charlotte K. Whitfield (**doc. 72**). The defendants, Bruce R. Clippinger and Jerome S. Bolin, have not filed responses.

Mr. Gage requests leave to withdraw from this case, stating that he petitioned the Kansas Supreme Court for disability inactive status pursuant to Kan. Sup. Ct. R. 220(c). On January 27, 2009, Mr. Gage did request that the Kansas Supreme Court place him on disability inactive status and stay the pending state disciplinary proceedings against him. Effective February 9, 2009, the Kansas Supreme Court placed Mr. Gage on disability inactive status and stayed the disciplinary proceedings against him while he is on disability inactive status. The Kansas Supreme Court also ordered that Mr. Gage shall not engage in the practice of law until restored to active status.

Subsequently, on March 3, 2009, pursuant to D. Kan. Rule 83.6.9(b), and based on the above-described Kansas Supreme Court order, the Disciplinary Panel of the United States

District Court for the District of Kansas found Mr. Gage incapacitated by reason of mental or physical infirmity or illness and suspended him from the practice of law until further order. Mr. Gage has been informed he can apply to the Disciplinary Panel for reinstatement pursuant to D. Kan. Rule 83.6.9(d). Because Mr. Gage is now suspended from practicing law in both state and federal court, his motion to withdraw as attorney of record for plaintiff in this case is granted.

In his motion to withdraw, Mr. Gage also requests the court stay this case pending appointment of substitute counsel for plaintiff and until such counsel enters an appearance. Mr. Gage further requests the court extend all deadlines, including the trial setting, for a period of time sufficient to allow substitute counsel to become familiar with plaintiff's claims and this case.

The record reflects that, on January 7, 2009, the presiding U.S. District Judge, Hon. Carlos Murguia, granted in part and denied in part defendants' motion to dismiss (doc. 66). Previously, the undersigned stayed all pretrial proceedings, including discovery, and vacated all deadlines in the scheduling order (doc. 26) pending Judge Murguia's ruling on the above-referenced motion to dismiss (doc. 64). The undersigned ordered that, within twenty days of Judge Murguia denying, in whole or in part, defendants' motion to dismiss, plaintiff shall serve complete, sworn responses, without objections, to defendants' first interrogatories and first requests for production, as well as provide her initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) (*see* docs. 52 & 62-64). In addition, the parties were to confer and submit an updated planning meeting report pursuant to Fed. R. Civ. P. 26(f) to the undersigned's

chambers within thirty days of the ruling on defendants' motion to dismiss.

To the court's knowledge, plaintiff has not provided her initial Rule 26(a)(1) disclosures and written discovery responses to defendants. Nor have the parties submitted an updated Rule 26(f) planning meeting report. Given the previous stay of all pretrial proceedings, there are no pending deadlines in the case.

In addition to Mr. Gage's motion to withdraw, the following motions are pending before the court:

a. On January 15, 2009, defendants filed a motion for reconsideration of one part of Judge Murguia's January 7, 2009 order on their motion to dismiss (doc. 67). Plaintiff has not filed any response to this motion.

b. On January 23, 2009, plaintiff filed a motion for extension of time to file a motion for reconsideration of Judge Murguia's January 7, 2009 order (doc. 69). Defendants filed a response to plaintiff's motion (doc. 73); plaintiff has not filed any reply brief.

Given there are no pending deadlines in this case, the court denies Mr. Gage's request for a stay of the case and extensions of all deadlines. Plaintiff and counsel for defendants shall appear for a status conference on **March 31, 2009, at 9:00 a.m.**, in U.S. Courthouse, Courtroom 236, 500 State Avenue, Kansas City, Kansas. The court anticipates that plaintiff needs to provide her initial disclosures and discovery responses to defendants and that the parties need to confer and submit an updated Rule 26(f) planning meeting report. At that time, the court will enter an amended scheduling order and discovery will resume.

In consideration of the foregoing,

IT IS HEREBY ORDERED:

1. Mr. Gage's motion (**doc. 72**) to withdraw as counsel for plaintiff is granted in part and denied in part. Mr. Gage is granted leave to withdraw as plaintiff's attorney of record. But Mr. Gage's request to stay this case and to extend all deadlines to give substitute counsel time to get familiar with the case is denied at this time.

2. This case is set for a status conference on **March 31, 2009, at 9:00 a.m.**, in U.S. Courthouse, Courtroom 236, 500 State Avenue, Kansas City, Kansas. Plaintiff shall appear in person at the conference. The court anticipates setting a deadline for plaintiff to retain substitute counsel and enter an appearance, or, failing that, to show cause why her case should not be dismissed, with prejudice, for lack of prosecution.

3. Copies of this order shall be served electronically on counsel of record and Ernest C. Ballweg,¹ and by certified mail (return receipt requested) on plaintiff at her last known address.²

IT IS SO ORDERED.

Dated this 17th day of March, 2009, at Kansas City, Kansas.

s/ James P. O'Hara
James P. O'Hara
U.S. Magistrate Judge

¹Pursuant to Kan. Sup. Ct. R. 221(a), and by order authorized by the Administrative Judge of the District Court of Johnson County, Kansas, it is the undersigned's belief that Mr. Ballweg has been or soon will be appointed to inventory Mr. Gage's case files.

² 7018 Albervan Street, Shawnee, Kansas 66216