

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BERNADETTE R. WAITES : CIVIL ACTION
: :
v. : :
: :
COUNTY OF DELAWARE DEPARTMENT :
OF HUMAN SERVICES, et al. : NO. 03-02965-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

February 10, 2005

Plaintiff's counsel, Gary S. Auerbach, Esquire, has filed a motion to be permitted to withdraw his appearance for the plaintiff, on the ground that plaintiff has failed to comply with the terms of the retainer agreement between them. On the present state of the record, the request for leave to withdraw will be denied.

In the "Contingent Fee Agreement" (attached as an exhibit to counsel's motion) plaintiff retained two lawyers, Mr. Auerbach and Bruce E. Brownstein. The motion to withdraw does not deal with Mr. Brownstein's representation, or explain why he has not (yet at least) entered an appearance for the plaintiff.

Counsel's motion asserts that plaintiff has breached the Contingent Fee Agreement because she has not (yet) paid costs and expenses incurred by counsel. The Contingent Fee Agreement does contemplate that, in addition to paying a (extremely generous) contingent fee from any recovery achieved, plaintiff is

required to pay costs and expenses. But the Agreement is silent as to when such costs and expenses must be paid, and expressly provides that they may be deducted from recoveries achieved. Moreover, plaintiff's explanation that she has become unemployed, and has asked counsel to set up a payment schedule so that she can ultimately defray the costs and expenses (whatever they may be; none are specified) seems entirely reasonable.

On this record, counsel may be relieved of responsibility for completing the task he has undertaken only if (1) plaintiff consents to his withdrawal, or (2) replacement counsel enters an appearance for plaintiff, with plaintiff's consent.

An Order follows.

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ORDER

AND NOW, this 10th day of February, 2005, upon
consideration of the motion of Gary S. Auerbach, Esquire to
withdraw his appearance for plaintiff, IT IS ORDERED:

That the motion is DENIED, without prejudice, in
accordance with the accompanying Memorandum.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.