

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JOHN DOE MC-1,

Case No. 20-cv-10568

Plaintiff,

v.

Hon. Victoria A. Roberts
Mag. Judge Elizabeth A. Stafford

THE UNIVERSITY OF MICHIGAN,
THE REGENTS OF THE UNIVERSITY
OF MICHIGAN (official capacity only),

Defendants.

**UNOPPOSED MOTION TO WITHDRAW AS COUNSEL
FOR THE UNIVERSITY**

The University of Michigan and the Regents of the University of Michigan (together, “the University”) respectfully move this Court to grant attorneys Cheryl A. Bush, Stephanie A. Douglas, Derek J. Linkous, and Andrea S. Carone from the law firm of Bush Seyferth PLLC leave to withdraw as counsel in this matter.

In support of this Motion, the University relies on the attached brief. As Local Rule 7.1 requires, undersigned counsel contacted Plaintiff’s counsel on May 13, 2020 to ask whether counsel would concur in the motion. Plaintiff’s counsel concurs in the relief sought.

Respectfully submitted,

BUSH SEYFERTH PLLC
Attorneys for the University
/s/ Cheryl A. Bush

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Dated: May 13, 2020

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MEMORANDUM IN SUPPORT OF
UNOPPOSED MOTION TO WITHDRAW AS COUNSEL
FOR THE UNIVERSITY

STATEMENT OF ISSUE PRESENTED

Where the client (here, the University) has decided to change counsel in a matter and no severe prejudice would be worked on any other party, should the attorneys be granted leave to withdraw?

The University answers: Yes

Plaintiff answers: Yes

The Court should answer: Yes

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Brandon v. Blech, 560 F.3d 536 (6th Cir. 2009)

Michigan Rule of Professional Conduct 1.16(b)

The University has decided to change counsel in this and other cases brought by individuals for claims against the University based on allegations of sexual misconduct by Robert Anderson.

Eastern District of Michigan Local Rule 83.25(b)(2) provides that an “attorney may withdraw . . . only on order of the Court.” In the Sixth Circuit, “attorney withdrawal issues are committed to the court’s discretion.” *Brandon v. Blech*, 560 F.3d 536, 537 (6th Cir. 2009). To determine when withdrawal is permitted, the Court looks to the rules of the state in which it sits—so here, Michigan. *See id.* at 538; *King v. Curtis*, 610 F. App’x 534, 537 (6th Cir. 2015). *Accord* Restatement (Third) of The Law Governing Lawyers § 1 cmt. b (2000) (“Federal district courts generally have adopted the lawyer code of the jurisdiction in which the court sits.”).

Michigan’s Rules of Professional Conduct are instructive with respect to motions to withdraw. *People v. Walker*, 276 Mich. App. 528, 550 n. 61 (2007). Those Rules provide the client (here, the University) with “a *right*” to change its choice of counsel “at any time.” Mich. R. Prof. Conduct 1.16, comment (emphasis added). And while the Rules of Professional Conduct “stop short of guaranteeing a right to withdraw, . . . withdrawal is *presumptively appropriate* where the rule requirements are satisfied.” *Brandon*, 560 F.3d at 538 (emphasis added).

In light of the University's decision to change counsel in these matters, the applicable rule is Michigan Rule of Professional Conduct 1.16(b), which states that "a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client." That is, the Rule focuses on the potential adverse effect on the client. Here, where the client has made the decision to change representation of it, allowing the undersigned attorneys to withdraw will not have any adverse effect on the University's interests—let alone a material adverse effect.

Brandon does recognize that "a district court may forbid withdrawal if it would work *severe* prejudice . . . third parties," such as the client's adversaries. 560 F.3d at 538 (citing *Fid. Nat. Title Ins. Co. of New York v. Intercounty Nat. Title Ins. Co.*, 310 F.3d 537, 541 (7th Cir. 2002)) (emphasis added). But no such severe prejudice would be worked here. Indeed, Plaintiff's counsel *concur*s in granting leave for the undersigned counsel to withdraw.

Moreover, The University has been engaged in productive conversations with Plaintiff's counsel and others representing former students about developing a fair, just, timely, and efficient resolution process—one that does not require drawn-out litigation. It has also filed responsive pleadings in all actions in which they were due. And the University is working expeditiously to replace its counsel in these matters. Selecting counsel to represent it in these matters is a decision the University

takes seriously and cannot be made lightly. These cases are in their very early stages and there is no reason to deprive the University of its choice of who represents it going forward.

For the foregoing reasons, the University respectfully requests that this Court grant attorneys Cheryl A. Bush, Stephanie A. Douglas, Derek J. Linkous, and Andrea S. Carone from the law firm of Bush Seyferth PLLC leave to withdraw as counsel in this matter.

Respectfully submitted,

BUSH SEYFERTH PLLC
Attorneys for the University

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