

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Jo Ann Hoeppner-Cruz v. Robert W. Brower

Hoeppner-Cruz v. Brower · No. 24-cv-05170-TSH · Decided December 17, 2025

SUMMARY

The court grants attorney Thomas Dwayne Reid’s motion to withdraw as counsel for Jo Ann Hoeppner-Cruz because of his practice closure and financial insolvency, subject to his continuing service obligations until substitute counsel appears. The court vacates pending dates, stays the jury trial, discharges the order to show cause, and denies as moot the motion to continue. Because Hoeppner-Cruz is a non-attorney trustee, the court orders her to obtain substitute counsel or file a status report by January 15, 2026, warning that failure to do so could result in dismissal.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Thomas S. Hixson
JURISDICTION	United States District Court for the Northern District of California
DECIDED	December 17, 2025
DOCKET	24-cv-05170-TSH
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff's counsel moved to withdraw shortly before trial. The court granted the motion with conditions, stayed the jury trial, vacated pending dates, discharged an order to show cause, and denied as moot plaintiff's ex parte motion to continue the trial.
STANDARD OF REVIEW	A motion to withdraw as counsel is committed to the sound discretion of the trial court. The court considers the reason for withdrawal, possible prejudice to the litigants, and the extent to which withdrawal may delay resolution of the case.
PRECEDENTIAL VALUE	unpublished, nonprecedential district court order

TOPICS

- civil procedure
- trusts
- trustee duties
- probate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether counsel should be permitted to withdraw from representing plaintiff because of financial hardship, practice closure, plaintiff's consent, and compliance with notice requirements.
2. Whether withdrawal should be conditioned on counsel's remaining counsel of record to serve filings until substitute counsel appears.
3. Whether a non-attorney trustee may represent a trust pro se in federal court.
4. Whether the pending trial and other dates should be vacated or stayed and the related show cause and continuance matters resolved.

HOLDINGS

1. Withdrawal was appropriate because counsel's practice closure and financial insolvency constituted good cause, plaintiff consented, and counsel provided reasonable advance notice and otherwise complied with applicable local and professional-conduct rules.
2. Withdrawal was granted on the condition that Reid remain counsel of record solely to serve filed documents on Hoepfner-Cruz until substitute counsel appears, with proof of service to be filed within three business days.
3. A non-attorney trustee may not represent the Trust pro se in this federal civil action; the Trust must appear through licensed counsel.

KEY QUOTATIONS

"The decision to permit counsel to withdraw is within the sound discretion of the trial court." (at 2)

"A non-attorney trustee cannot represent a trust in a nonprobate general civil suit." (at 4)

"Because a non-attorney trustee may not appear on behalf of a trust except by counsel, Hoepfner-Cruz has until January 15, 2026, to find substitute counsel." (at 5)

FACTUAL BACKGROUND

Jo Ann Hoepfner-Cruz sued Robert W. Brower concerning the sale of property held by the Anthony J. Freitas and Jacqueline Hoepfner-Freitas 1997 Revocable Trust, alleging breach of fiduciary duty. Her counsel, Thomas Dwayne Reid, stated that he had to close his law practice because of significant financial loss and insolvency, including cancellation of malpractice insurance for nonpayment. Reid notified plaintiff and defendant of his inability to continue, plaintiff consented to withdrawal, and defendant did not oppose it.

PROCEDURAL HISTORY

Hoepfner-Cruz filed this diversity-related trust dispute on August 15, 2024, alleging that Brower breached fiduciary duties while serving as trustee. The court had set the matter for jury trial and ordered supplemental briefing concerning the probate exception. After plaintiff failed to comply with the briefing order and an order to

show cause, her counsel moved to withdraw because of financial insolvency and closure of his practice. Plaintiff consented, and defendant did not oppose the withdrawal.

DISPOSITION

other

CASES CITED

- United States v. Carter, 560 F.3d 1107, 1113 (9th Cir. 2009)
- Robinson v. Delgado, No. CV02-1538 NJV, 2010 WL 3259384, at *2 (N.D. Cal. Aug. 18, 2010)
- Nehad v. Mukasey, 535 F.3d 962, 970 (9th Cir. 2008)
- El Hage v. U.S. Sec. Assocs., Inc., No. C06-7828-THE, 2007 WL 4328809, at *1 (N.D. Cal. Dec. 10, 2007)
- No. 15-cv-01489-LHK, 2015 WL 4760506, at *8 (N.D. Cal. Aug. 12, 2015)
- Bumb v. Gobin, No. 25-cv-04729-SVK, 2025 WL 3128196, at *1 (N.D. Cal. Nov. 7, 2025)
- C.E. Pope Equity Tr. v. United States, 818 F.2d 696, 697-98 (9th Cir. 1987)
- Aulisio v. Bancroft, 230 Cal. App. 4th 1516, 1523 (2014)
- Ziegler v. Nickel, 64 Cal. App. 4th 545, 549 (1998)
- Emp. Painters' Trust v. Ethan Enters., Inc., 480 F.3d 993, 998 (9th Cir. 2007)

OPINION

1 2 3 UNITED STATES DISTRICT COURT 4 NORTHERN DISTRICT OF CALIFORNIA 5 6
JO ANN HOEPPNER-CRUZ, Case No. 24-cv-05170-TSH 7 Plaintiff, ORDER GRANTING
MOTION TO 8 v. WITHDRAW AS COUNSEL WITH CONDITIONS; DISCHARGING 9
ROBERT W BROWER, ORDER TO SHOW CAUSE; DENYING AS MOOT EX PARTE
MOTION TO 10 Defendant. CONTINUE 11 Re: Dkt. Nos. 60, 61, 66 12 13 I. INTRODUCTION
14 Plaintiff Jo Ann Hoeppner-Cruz, in her capacity as the Trustee of The Anthony J. Freitas 15 and
Jacqueline Hoeppner-Freitas 1997 Revocable Trust, brings this case under California Probate 16
Code section 17200 against Defendant Robert Brower related to the sale of property under the 17
Trust.

ECF No. 1. The case is scheduled for jury trial on January 20, 2026. ECF No. 44. 18 On December
4, 2025, Thomas Dwayne Reid filed a Motion to Withdraw as Counsel for 19 Hoeppner-Cruz.
ECF No. 66. The Court finds this matter suitable for disposition without oral 20 argument and
VACATES the January 15, 2026, hearing. See Civ. L.R. 7-1(b).

For the reasons 21 stated below, the Court GRANTS the motion to withdraw and VACATES all
pending dates in 22 this case. The jury trial in this case is STAYED pending further order of the
Court. In addition, 23 the Court DISCHARGES the show cause order at ECF No. 60 and DENIES
as moot Hoeppner- 24 Cruz’s Ex Parte Motion at ECF No. 61.1 25 II. BACKGROUND 26

Hoeppner-Cruz filed this case on August 15, 2024, alleging that Brower breached his 27 1 fiduciary duty when he served as trustee for the Trust.

ECF No. 1. The case is scheduled for jury 2 trial on January 20, 2026. ECF No. 44. 3 On November 12, 2025, the Court ordered supplemental briefing addressing whether the 4 probate exception applies to each of the claims in this case. ECF No. 56. Brower filed a brief on 5 November 14, 2025. ECF No. 57.

Because Hoeppner-Cruz failed to file a response in compliance 6 with the Court's order at ECF No. 56, the Court issued an order to show cause on November 24, 7 2025, directing Hoeppner-Cruz to file a response by December 1, 2025. See ECF No. 60. 8 On November 25, 2025, Hoeppner-Cruz filed an Ex Parte Motion to Continue Trial Date 9 and Pre-Trial Dates, "requesting that the Court continue the trial currently scheduled for January 10 20, 2026 to allow [Hoeppner-Cruz] time to retain substitute counsel in the matter."2 ECF No. 61.

11 On December 2, 2025, the Court issued an order addressing Hoeppner-Cruz's counsel of record, 12 explaining that Reid had failed to comply with the Court's order for supplemental briefing and its 13 order to show cause. ECF No. 65.

The Court ordered Reid to respond by December 5, 2025. Id. 14 On December 4, 2025, Reid filed the instant Motion to Withdraw as Counsel, on the 15 ground that he is forced to close his law practice due to financial hardship. ECF No. 66. Reid 16 notified Hoeppner-Cruz of his inability to continue representing her on November 15, 2025. See 17 Declaration of Thomas D. Reid at 2 ("Reid Decl.") (ECF No. 66-1).

Hoeppner-Cruz consents to 18 the withdrawal. See Consent to Withdrawal of Attorney (ECF No. 66-2). And Brower responds 19 that he does not oppose the request. ECF No. 67.3 20 III. LEGAL STANDARD 21 The Local Rules provide that "[c]ounsel may not withdraw from an action until relieved by 22 order of Court after written notice has been provided, reasonably in advance, to the client and to 23 all other parties who have appeared in the case." Civ.

L.R. 11-5(a). The decision to permit 24 counsel to withdraw is within the sound discretion of the trial court. *United States v. Carter*, 560 25 2 On November 30, 2025, Brower filed an Opposition to Hoeppner-Cruz's ex parte motion, 26 requesting that the Court deny the motion without prejudice. ECF No. 64. 27 3 Brower requests "that the motion be granted and entered nunc pro tunc to November 15, 2025, 1 F.3d 1107, 1113 (9th Cir.

2009). When addressing a motion to withdraw, the consent of the client 2 is not dispositive. *Robinson v. Delgado*, No. CV02-1538 NJV, 2010 WL 3259384, at *2 (N.D. 3 Cal. Aug. 18, 2010). Rather, the court must consider factors such as the reason counsel seeks to 4 withdraw, the possible prejudice caused to the litigants, and the extent to which withdrawal may 5 delay resolution of the case.

Id. 6 Additionally, the Local Rules mandate compliance with the standards of professional 7 conduct required of members of the State Bar of California. Civ. L.R. 11-4(a)(1); see also *Nehad 8 v. Mukasey*, 535 F.3d 962, 970 (9th Cir. 2008) (applying California Rules of Professional Conduct 9 to attorney withdrawal). Counsel must take steps to avoid reasonably foreseeable prejudice to the 10 rights of the client, including giving sufficient notice to the client to allow time for employment of 11 other counsel, complying with Rule of Professional Conduct 1.16(e) (regarding the return of all 12 client materials and property), and complying with all other applicable laws and rules.

El Hage v. 13 U.S. Sec. Assocs., Inc., No. C06-7828-THE, 2007 WL 4328809, at *1 (N.D. Cal. Dec. 10, 2007). 14 IV. DISCUSSION 15 Based on the record in this case, the Court finds withdrawal is appropriate. California Rule 16 of Professional Conduct 1.16 provides several enumerated grounds pursuant to which counsel may 17 properly seek to withdraw from a representation, including where “the client knowingly and freely 18 assents to termination of the representation,” and where “the lawyer believes in good faith, in a 19 proceeding pending before a tribunal, that the tribunal will find the existence of other good cause 20 for withdrawal.” Here, Reid states that he cannot adequately represent Hoeppner-Cruz because he 21 must close his law practice as his office has suffered significant financial loss and his practice is 22 financially insolvent.

Reid Decl. ¶¶ 4–6. Because of this financial hardship, Reid’s malpractice 23 insurance was canceled due to nonpayment—this “caused an urgent need to cease practice on 24 existing matters.” Id. at ¶ 5. Reid notified Hoeppner-Cruz on November 15, 2025, and Brower on 25 November 17, 2025, that he could no longer represent Hoeppner-Cruz in this matter. Id. at ¶¶ 7–8.

26 Hoeppner-Cruz consents to the withdrawal. See ECF No. 66-2. The Court finds that Reid’s 27 practice closure and financial insolvency, along with Hoeppner-Cruz’s consent, provides good 1 No. 15-cv-01489-LHK, 2015 WL 4760506, at *8 (N.D. Cal. Aug. 12, 2015) (granting motion to 2 withdraw where “[firm] ceased operations, effectively terminating [counsel’s] employment and 3 rendering [counsel] financially unable to continue to represent [client]”); *Bumb v. Gobin*, No. 25-4 cv-04729-SVK, 2025 WL 3128196, at *1 (N.D.

Cal. Nov. 7, 2025) (citing Cal. R. Prof. Conduct 5 1.16(b)(6)) (explaining client consent “weighs in favor of granting withdrawal”). 6 In addition, the Court finds Reid has complied with the requirements of Civil Local Rule 7 11-5(a) and the California Rules of Professional Conduct because Reid provided reasonable 8 advance notice to Hoeppner-Cruz and Brower of his intention to withdraw as counsel of record 9 and provided Hoeppner-Cruz time to obtain substitute counsel.

See ECF No. 66. Therefore, based 10 on this record, the Court finds good cause exists to permit Reid’s withdrawal. 11 However, under the Local Rules, entities can only appear through licensed

counsel. See 12 Civ. L.R. 3-9(b) (“A corporation, unincorporated association, partnership or other such entity may 13 appear only through a member of the bar of this Court.”); see C.E.

Pope Equity Tr. v. United 14 States, 818 F.2d 696, 697–98 (9th Cir. 1987) (holding trustee cannot present arguments pro se on 15 behalf of trust in federal court). Under California law, a non-attorney trustee cannot represent a 16 trust in a nonprobate general civil suit. Aulisio v. Bancroft, 230 Cal. App. 4th 1516, 1523 (2014); 17 see Ziegler v. Nickel, 64 Cal. App.

4th 545, 549 (1998) (“A non-attorney trustee who represents 18 the trust in court is representing and affecting the interests of the beneficiary and is thus engaged 19 in the unauthorized practice of law.”). There is no information before the Court indicating that 20 Hoeppner-Cruz is an attorney.

Accordingly, based on the present record, it appears she cannot 21 represent the Trust in this case. The Court therefore grants Reid’s motion to withdraw on the 22 condition that he remain counsel of record pursuant to Civil Local Rule 11-5(b) to serve all filed 23 documents on Hoeppner-Cruz until substitute counsel appears on her behalf. 24 Hoeppner-Cruz must file a notice of appearance by new counsel or status report indicating 25 that she has not found counsel by January 15, 2026.

Hoeppner-Cruz is advised that failure to 26 retain substitute counsel could result in dismissal of the case. Cf. Emp. Painters’ Trust v. Ethan 27 Enters., Inc., 480 F.3d 993, 998 (9th Cir. 2007) (affirming entry of default judgment where 1 V. CONCLUSION 2 For the reasons stated above, the Court GRANTS Reid’s Motion to Withdraw as Counsel 3 || for Hoeppner-Cruz, VACATES all pending dates in this case, STAYS the jury trial in this case, 4 || DISCHARGES the show cause order at ECF No. 60, and DENIES as moot Hoeppner-Cruz’s Ex 5 Parte Motion at ECF No. 61.

6 Because no substitution of counsel has been filed on Hoeppner-Cruz’s behalf, the motion 7 to withdraw is granted on the condition that Reid remain counsel of record to serve all filed 8 documents on Hoeppner-Cruz until a substitution of counsel is filed. See Civ. L.R. 11-5(b).

For 9 all such documents, Reid shall e-file proof of service within three business days of filing. Because 10 a non-attorney trustee may not appear on behalf of a trust except by counsel, Hoeppner-Cruz has 11 until January 15, 2026, to find substitute counsel. Hoeppner-Cruz is advised that failure to retain 12 || substitute counsel could result in dismissal of the case.

The Court ORDERS Hoeppner-Cruz to 5 13 file a notice of appearance by new counsel or status report indicating that she has not found 14 || counsel by January 15, 2026. 3 15 The Court ORDERS Reid to provide a copy of this order to Hoeppner-Cruz and file an a 16 attestation to that effect no later than December 22, 2025. IT IS SO ORDERED. 19 Dated: December 17, 2025 20 TAA.

1}-4— THOMAS S. HIXSON 21 United States Magistrate Judge 22 23 24 25 26 27 28

