

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
TENNESSEE

Demarcus Keyon Cole v. Shawn Phillips, Warden

Cole · No. 1:24-cv-01189-STA-jay · Decided June 1, 2026

SUMMARY

The United States District Court for the Western District of Tennessee directs appointed counsel Brian Mounce to provide additional information supporting his second motion to withdraw. The Court requires counsel to file a sealed, ex parte affidavit citing the applicable provisions of Tennessee Rule of Professional Conduct 1.16 within seven days.

CASE DETAILS

COURT	United States District Court for the Western District of Tennessee
WRITING FOR THE COURT	S. Thomas Anderson
JURISDICTION	United States District Court for the Western District of Tennessee
DECIDED	June 1, 2026
DOCKET	1:24-cv-01189-STA-jay
DISPOSITION	other
PROCEDURAL POSTURE	The court considered appointed counsel's second motion to strike and second motion to withdraw in a federal habeas proceeding. The court directed counsel to provide additional information supporting withdrawal rather than granting or denying the motion.
PRECEDENTIAL VALUE	unpublished district court order
PARTIES	Demarcus Keyon Cole v. Shawn Phillips, Warden

TOPICS

federal habeas corpus civil procedure

PRACTICE AREAS

federal habeas corpus legal ethics civil procedure

QUESTIONS PRESENTED

1. Whether counsel's second motion to withdraw satisfied Local Rule 83.5's requirement that the motion include the reasons requiring withdrawal.
2. Whether counsel could provide information supporting withdrawal through sealed and ex parte filings to preserve attorney-client confidentiality.

HOLDINGS

1. A motion to withdraw that broadly invokes the Tennessee Rules of Professional Conduct and attorney-client privilege, without identifying the applicable rule or specific grounds for withdrawal, does not provide sufficient information for the court to evaluate the request under Local Rule 83.5.
2. Counsel may support a motion to withdraw through sealed and, when necessary, ex parte materials for in-camera review to preserve confidential attorney-client information.

KEY QUOTATIONS

“Local Rule 83.5 requires a motion to withdraw as counsel to “include the reasons requiring withdrawal.””
(Order text)

“Documents supporting motions to withdraw as counsel are routinely filed under seal where necessary to preserve the confidentiality of the attorney-client relationship between a party and its counsel.” (Order text)

FACTUAL BACKGROUND

Brian Mounce was appointed counsel of record for petitioner Demarcus Keyon Cole. In his second motion to withdraw, counsel broadly invoked attorney-client privilege and the Tennessee Rules of Professional Conduct without identifying a particular rule or provision supporting withdrawal. Counsel served the motion on Cole, satisfying the applicable notice requirement, but the court found that the motion still lacked sufficient information to evaluate the request.

PROCEDURAL HISTORY

Counsel's initial motion to strike and motion to withdraw had been denied without prejudice on May 29, 2026, with the motion to withdraw denied for failure to comply with Local Rule 83.5. Counsel then filed a second motion to strike and second motion to withdraw. The court concluded that the second motion did not provide enough information to evaluate withdrawal and ordered counsel to submit a sealed, ex parte affidavit within seven days.

DISPOSITION

other

CASES CITED

- Sabre Int'l Security v. Torres Advanced Enterpr. Solutions, LLC, 219 F. Supp. 3d 155, 158 (D.D.C. 2016)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
TENNESSEE EASTERN DIVISION

DEMARCUS KEYON COLE,)) Petitioner,)) v.) Case No. 1:24-cv-01189-STA-jay) SHAWN
PHILLIPS, WARDEN,)) Respondent.)

ORDER DIRECTING COUNSEL TO FURNISH ADDITIONAL INFORMATION Before the Court is counsel Brian Mounce's Second Motion to Strike (ECF No. 64) and Second Motion to Withdraw (ECF No. 65) filed May 29, 2026.

Counsel is currently appointed counsel of record for Petitioner Demarcus Keyon Cole. On May 29, 2026, the Court denied counsel's initial motion to strike and motion to withdraw without prejudice. The Court denied the initial motion to withdraw for failure to comply with Local Rule 83.5.

In his Second Motion to Withdraw, counsel has stated as grounds for his request that "without waiving any other privileges, rights, or protections, Counsel raises attorney client privilege and the Tennessee rules of professional conduct...." Counsel's certificate of service indicates that counsel has served a copy of the Second Motion to Withdraw on Petitioner Demarcus Keyon Cole and therefore satisfied the notice requirement for withdrawal under the Local Rules.

The Court continues to find, however, that counsel has not provided the Court with enough information to evaluate his request to withdraw. Local Rule 83.5 requires a motion to withdraw as counsel to "include the reasons requiring withdrawal." Counsel has broadly cited the Tennessee Rules of Professional Conduct and the attorney-client privilege. Rule 1.16 of the Tennessee Rules of Professional Conduct sets out a number of grounds for withdrawal, some of which make withdrawal mandatory and others which only permit withdrawal of counsel.

See Tenn. R. Prof. Conduct 1.16(a) & (b). The Second Motion to Withdraw simply refers to the Tennessee Rules of Professional Conduct without citation to any particular rule, Rule 1.16, or any of Rule 1.16's specific provisions. Counsel also invokes the attorney-client privilege.

To the extent that counsel believes the information supporting his request to withdraw is privileged and should remain confidential, "[d]ocuments supporting motions to withdraw as counsel are routinely filed under seal where necessary to preserve the confidentiality of the attorney-client relationship between a party and its counsel." *Sabre Int'l Security v. Torres Advanced Enterpr.*

Solutions, LLC, 219 F.Supp.3d 155, 158 (D.D.C. 2016) (collecting cases). A mechanism therefore exists which would allow counsel to support his request for withdrawal without breaching his duty to keep privileged information confidential.

Under the circumstances, counsel is directed to file an affidavit containing a statement of reasons supporting his request to withdraw with citation to the appropriate provisions of Tennessee Rule of Professional Conduct. Counsel's affidavit and any other supporting materials should be filed under seal and ex parte for the Court to review in camera, to the extent necessary to preserve the confidentiality of any privileged information.

Counsel's affidavit is due within 7 days of the entry of this order. IT IS SO ORDERED this 1st day of June, 2026. s/ S. Thomas Anderson S. THOMAS ANDERSON UNITED STATES DISTRICT JUDGE