

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In Re: CommuniClique, Inc

Chapter 7 (Involuntary Petition)

Case No. 19-10573-KG

Objections due by: May 28, 2019 4:30 PM

Debtor(s)

Hearing Date: June 4, 2019 10:00 AM

MOTION SEEKING TO WITHDRAW A COUNSEL

COMES NOW, the Counsel for the above named debtor , Communiclique, Inc., Neil F. Dignon, Esquire, (hereinafter “Moving Counsel”) who respectfully move(s) this Honorable Court to enter an order allowing him to withdraw as counsel for the Debtor In support of his request Mr. Dignon states the following:

1. This proceeding seeking Leave to Withdraw as Counsel is a contested matter within the meaning of 9014 and 4001 of the Federal Rules of Bankruptcy Procedure, and this court has jurisdiction over this matter pursuant to 28 U.S.C. Section 157.

BACKGROUND

2. On or about March 15, 2019, a group of creditors (hereinafter “Petitioning Creditors”) of the above named Debtor, filed with this court a Petition seeking to involuntarily place the Debtor in Chapter 7 Bankruptcy.
3. On or about April 25, 2019, the court granted an extension of time to file and answer.
4. On or about April 29, 2019, the above named Debtor through undersigned counsel filed its answer.
5. On or about May 2, 2019, the Petitioning Creditors filed a Motion to Strike the Debtor’s Answer alleging that certain exhibits attached to Debtor’s answer contained fraudulent information, and/or had been tampered with.

6. On or about May 5, 2019, for reasons other than the reasons alleged in the Petitioning Creditors' Motion to Strike, but which Moving Counsel is not at liberty to disclose, Debtor amended its answer removing the exhibit portions that were alleged to be tainted.
7. On or about May 9, 2019, this honorable court denied the Petitioning Creditors' Motion to Strike Debtor's Answer, but in its ruling accepted the Petitioning Creditors' allegations that the exhibit portions Debtor had removed when making its amended answer were fraudulent, and entered an Order of relief against the Debtor.
8. On or about May 9, 2019, Alfred Giuliano was appointed Chapter 7 Trustee

COUNSEL'S REQUEST TO WITDRAW

9. As stated *Supra*. when issuing its ruling from the bench, the court stated that it accepted the Petitioning Creditor's characterization as fraudulent certain documents attached to the Debtor's Answer.
10. Undersigned Counsel reminded the Court that the allegedly offending documents had been removed from the record per the amended answer and that an order of relief was not appropriate.
11. Exercising its discretion, the court rejected counsel's argument, and observing that the documents the court had found to be offending had been initially filed with the court, confirmed to counsel that the court's ruling would stand.
12. The court went on to advise that in light of the presentation of what it had ruled to be fraudulent material into the record, the court would be referring the matter and by extension the Debtor, to the United States Department of Justice for criminal investigation.
13. The court went on to say that should undersigned counsel fail to file a motion to withdraw as counsel for the Debtor before the close of business Friday, May 10, 2019, the court would also refer undersigned counsel to the United States Department of Justice for

criminal investigation regarding Moving Counsel's involvement in the filing of the documents the court had ruled to be fraudulent.

14. Rule 1.7(a)(2) of the Delaware Lawyer's Rules of Professional Conduct (hereinafter "Rule 1.7(a)") forbids a Delaware lawyer from representing 2 clients where the representation presents a significant risk that representing one client would materially limit the lawyers responsibilities to another client.

15. While Rule 1.7(a) is not precisely on point in the present case, the comments to Rule 1.7(a) are germane. Comment 1 states in relevant part,

Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or the lawyer's own interest.

16. If Moving Counsel and the Debtor were to be subjects of the same criminal investigation the circumstance would all but certainly make Moving Counsel's personal interest adverse to the interest of the Debtor, and by extension compromise Moving Counsel's independent judgment regarding and loyalty to the Debtor.

17. It is Moving Counsel's position that even the spectre of Moving Counsel and the Debtor being subjects of the same criminal investigation divides Moving Counsel's loyalty between Moving Counsel's own interest and the interest of the Debtor.

18. For the reason's stated *supra*. Moving Counsel faces a patent conflict of interest as defined in Rule 1.7(a) and therefore Moving Counsel's failure to withdraw would directly violate Rule 1.7(a).

19. The Debtor has expressed his opposition of this motion.

WHEREFORE, upon consideration of the facts presented, Counsel for the Debtor, Neil F. Dignon, Esquire respectfully requests this honorable Court enter an Order granting him leave to withdraw as counsel.

Respectfully submitted,

/s/ Neil F. Dignon

Neil F. Dignon, Esquire

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