

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI**

UNITED STATES OF AMERICA,	)	
	)	
	)	
	)	
Plaintiff,	)	
	)	
	)	No. 08-00297-09-CR-W-FJG
	)	
Anahit Nshanian	)	
	)	
	)	
Defendant.	)	

**MOTION FOR AN ORDER REQUIRING LEAD COUNSEL  
EMERSON TO RESPOND TO LOCAL COUNSEL’S MOTION TO  
WITHDRAW AND TO SET THIS MATTER FOR HEARING TO  
DETERMINE STATUS OF SUBSTITUTE LOCAL COUNSEL  
WITH SUGGESTIONS IN SUPPORT**

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**COMES NOW** John R. Osgood, and hereby moves the court to enter an order requiring Counsel Emerson to respond to local counsel’s motion to withdraw filed on March 10, 2009 and to set the matter for hearing on the motion to determine the status of local counsel. As grounds therefore, counsel states:

1. Counsel previously informed the court that he no longer has a satisfactory working relationship with California counsel, Mr. Emerson. It was and still is local counsel’s position that local counsel is obliged and obligated to perform certain legal duties and

tasks for the client pursuant to Local Rule 83.5 to adequately represent the client as local counsel and protect himself from eventual potential claims of ineffective assistance of counsel and malpractice.

2. Local Counsel and lead counsel, Mr. Emerson, have never been able to agree as to what this entails and reached a final impasse in their strained working relationship over six weeks ago. Mr. Emerson has failed to hire local counsel even though he and his client discharged undersigned counsel some time ago and have been informed by court staff of the need to do so.
3. Furthermore, Mr. Emerson has failed to respond to electronic mail sent to him since undersigned counsel filed his motion to withdraw and has failed to pay local counsel for services rendered including failure to even pay the \$50.00 *pro hac vice* fee that local counsel paid from his own personal funds.
4. While counsel acknowledges that non-payment of fees and of expenses are not grounds to withdraw in this district, the refusal of the client to communicate with local counsel per direction of lead counsel and the refusal of lead counsel to cooperate with local counsel places local counsel in an untenable position and could ultimately subject him to claims of ineffective assistance of counsel. See *Hill v. Lockhart*, 894 F.2d 1009 (8<sup>th</sup> Cir. 1990) (*en banc*) and *Garmon v. Lockhart*, 938 F.2d 120 (8<sup>th</sup> Cir. 1991).
5. Local Rule 83.5 clearly requires that attorneys not licensed in this state and admitted to practice before this Court must obtain local counsel. The rule further specifies certain duties that local counsel must perform. Both the client and the lead attorney, Mr. Emerson,

have and continue to prevent local counsel from performing any such duties while at the same time they have blatantly refused to secure replacement local counsel.

**WHEREFORE**, counsel moves the court for an order requiring lead counsel Emerson to respond to counsel's previously filed motion to withdraw and to thereafter set this matter for hearing to resolve any remaining issues as to local counsel.

Respectfully submitted,

/s/

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**CERTIFICATE OF SERVICE**

I, John R. Osgood, certify that a copy of this pleading has been caused to be served on government counsel and all other defense counsel of record via the electronic court filing system (ECF) on today, Thursday, April 30, 2009.

/s/

**JOHN R. OSGOOD**

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