

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

UNITED STATES OF AMERICA, )  
                                  )  
                                  )  
Plaintiff,                    )  
                                  )  
v.                             )                                    No.     3:19-CR-020-PLR-DCP-1  
                                  )  
                                  )  
                                  )  
TODJI K. MARTIN,            )  
                                  )  
Defendant.                    )

**MEMORANDUM AND ORDER**

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Judge, as may be appropriate. Presently before the Court is defense counsel's Motion to Withdraw as Attorney [Doc. 40], filed on February 10, 2020. On February 28, 2020, the parties appeared before the Court for a motion hearing. Assistant United States Attorney Kevin Quencer was present representing the Government. Assistant Federal Defender Molly Kincaid was present representing the Defendant, who was also present. Attorney Mark Brown was also present.

The motion asks the Court to appoint substitute counsel for Defendant Martin because Assistant Federal Defender Kincaid and the Federal Defender Services of Eastern Tennessee ("FDSET") have an actual conflict of interest that ethically prohibits their representation of the Defendant. Assistant Federal Defender Kincaid stated that she discovered an actual and current conflict involving the FDSET in the course of Defendant's case. The Court addressed Defendant Martin to ensure that he understood that Assistant Federal Defender Kincaid had a conflict that requires that she withdraw from his case. AUSA Quencer stated that the Government takes no

position on the motion.

The Sixth Amendment right to counsel encompasses the right to have an attorney who does not have a conflict arising from simultaneous representation of clients with conflicting interests. *See Glasser v. United States*, 315 U.S. 60, 70 (1942), superseded by statute as held in *Bourjaily v. U.S.*, 483 U.S. 171 (1987) (regarding the admission of co-conspirator's statements). In light of the existence of an apparent, direct and actual conflict in this case, the Court finds that good cause exists to grant defense counsel's Motion to Withdraw as Attorney [Doc. 40], the same is **GRANTED**, and Assistant Federal Defender Kincaid and the FDSET are relieved as counsel of record for Defendant Martin. *See Wilson v. Mintzes*, 761 F.2d 275, 280 (6th Cir. 1985) (holding that a defendant seeking to substitute counsel must show good cause).

The Court recognizes the need for the Defendant to be represented continuously by conflict-free counsel. CJA Panel Attorney Mark Brown appeared and agreed to accept representation of the Defendant. The Court therefore and hereby **SUBSTITUTES** and **APPOINTS** Attorney Brown as the Defendant's counsel of record under the Criminal Justice Act ("CJA"), 18 U.S.C. § 3006A. Assistant Federal Defender Kincaid is **DIRECTED** to provide the Defendant's file to new counsel as expeditiously as possible.

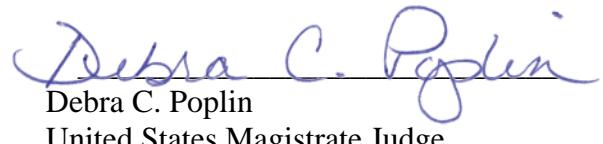
Accordingly, it is **ORDERED**:

- (1) Defense counsel's Motion to Withdraw as Attorney [Doc. 40] is **GRANTED**;
- (2) Assistant Federal Defender Kincaid and the FDSET are permitted to withdraw as counsel of record for the Defendant and are **DIRECTED** to transfer the Defendant's file and any discovery to new counsel as soon as possible; and

(3) Attorney Mark Brown is **SUBSTITUTED** and **APPOINTED** as the Defendant's counsel of record under the CJA.

**IT IS SO ORDERED.**

ENTER:



Debra C. Poplin  
United States Magistrate Judge