

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

-vs-

Case No. 6:06-cv-137-Orl-19KRS

**EDWARD S. DIGGES, JR., NEXSTAR
COMMUNICATIONS, LLC, TMT
EQUIPMENT COMPANY, LLC, TMT
MANAGEMENT GROUP, LLC, POSA, LLC,
POSA TMT, LLC, TELEVEST
COMMUNICATIONS, LLC, TELEVEST
GROUP, LLC, SPIN DRIFT, LLC,**

Defendants.

ORDER

This case comes before the Court on the following:

1. Motion to Set Aside Entry of Default of Defendant Edward S. Digges, Jr. (Doc. No. 25, filed April 21, 2006);
2. Memorandum in Support of Motion to Set Aside Entry of Default of Defendant Edward S. Digges, Jr. (Doc. No. 26, filed April 21, 2006);
3. Answer to the Complaint of Defendant Edward S. Digges, Jr. (Doc. No. 27, filed April 26, 2006);
4. Text Only Order of the Court (Doc. No. 43, filed May 26, 2006);
5. Motion to Strike of Defendant Edward S. Digges, Jr. Opposition to the Motion to Set Aside Entry of Default (Doc. No. 41, filed May 18, 2006);

6. Opposition of Plaintiff Securities and Exchange Commission to Motion to Strike (Doc. No. 42, filed May 19, 2006);
7. Response of Defendant Edward S. Digges, Jr. To Order Directing Defendant To Comply With Local Rule 2.03(d) (Doc. No. 44, June 12, 2006);
8. Entry of Limited Appearance on Behalf of Defendant Edward S. Digges, Jr. (Doc. No. 51, filed June 19, 2006);
9. Motion for Relief from Injunction of Defendant Edward S. Digges, Jr. (Doc. No. 53, filed June 19, 2006); and
10. Motion of Gregg L. Bernstein to Appear *Pro Hac Vice* (Doc. No. 55, filed June 19, 2006).

Background

At Docket Number 9, an acceptance of service of process was filed for Defendant Digges by an attorney, Gerard P. Martin. In that document, Mr. Martin alleged that he had been retained by such Defendant as well as by other Defendants. (Doc. No. 9, p. 2). Nevertheless, Defendant Digges subsequently filed a Motion and Memorandum (Doc. Nos. 25, 26), an Answer to the Complaint (Doc. No. 27), and a second motion (Doc. No. 41) on his own behalf.

On May 26, 2006, this Court directed Defendant Edward S. Digges, Jr. to comply with Local Rule 2.03(d).

Since that time, two new attorneys, Gregg L. Bernstein and Lee Fugate, have requested that the Court grant them a "limited appearance" status in this case on behalf of Defendant Digges (Doc. No. 51). Specifically, Mr. Bernstein and Mr. Fugate seek to act as counsel "for the limited purpose of filing and presenting Defendant's Motion for Relief from Injunction." (*Id.*). Messers. Bernstein

and Fugate do not represent that they wish to appear as co-counsel with Mr. Martin or as substitute counsel.

Discussion

The posture of this case raises three issues squarely addressed by the Local Rules of Court: (1) the status of attorney Gerald P. Martin, (2) the filing of unauthorized pleadings by a litigant represented by counsel; and (3) the confused and intermittent appearance of counsel. The Court will address each issue in turn.

General Appearance of Counsel. Local Rule 2.03(a) sets forth the general rule concerning the general appearance of counsel in lawsuits brought before this Court. Local Rule 2.03(a) provides:

Every pleading or paper of any kind filed by an attorney in this Court . . . shall constitute a general appearance on behalf of the persons or parties for whom the pleading or paper is filed.

Attorney Gerald P. Martin filed with the Court a document styled "Acceptance of Service of Process" on behalf of all of the Defendants, including Defendant Digges, on February 6, 2006. (Doc. No 9). In that document, Mr. Martin stated that he "has been retained as counsel for Defendants in this matter and is authorized to accept service of the aforementioned pleadings, motion, brief and order on their behalf." (Doc. No. 9, p. 2).

The Local Rules represent controlling obligations on attorneys appearing before the Court. *See Green v. Montgomery County, Ala.*, 784 F. Supp. 841, 842 (M.D. Ala. 1992). Therefore, Defendant Digges' argument that neither he nor Mr. Martin intended for this document to constitute a general appearance is not well taken. (*See* Doc. No. 44). Consequently, under the plain language

of Rule 2.03(a), Mr. Martin has made a general appearance in this lawsuit on behalf of all of the Defendants, including Defendant Digges.

Moreover, Local Rule 2.03(b) provides:

No attorney, having made a general appearance under subsection (a) of this rule, shall thereafter abandon the case or proceeding in which the appearance was made, or withdraw as counsel for any party therein, except by written leave of Court obtained after giving ten (10) days' notice to the party or client affected thereby, and to opposing counsel.

Mr. Martin has not requested to withdraw as counsel for any Defendant in this action as required by Local Rule 2.03(b), nor does the record reflect that he has otherwise complied with the requirements of Local Rule 2.03(b). Therefore, Mr. Martin is presently counsel of record for Defendants Edward S. Digges, Jr., Nexstar Communications, LLC, TMT Equipment Company, LLC, TMT Management Group, LLC, POSA, LLC, POSA TMT, LLC, Televest Communications, LLC, Televest Group, LLC, Spin Drift, LLC.

Unauthorized Filings by Parties Represented by Counsel. Because Mr. Martin is counsel representing Defendant Digges in this action, Local Rule 2.03(d) operates to bar any filings made by Defendant Digges in proper person. Local Rule 2.03(d) provides:

Any party for whom a general appearance of counsel has been made shall not thereafter take any step or be heard in the case in proper person, absent prior leave of Court; nor shall any party, having previously elected to proceed in proper person, be permitted to obtain special or intermittent appearances of counsel except upon such conditions as the Court may specify. A corporation may appear and be heard only through counsel admitted to practice in the Court pursuant to Rule 2.01 or Rule 2.02.

Local Rule 2.03(d).¹ Consequently, the filings of Defendant Digges at Docket Numbers 25, 26, 27 and 41 are unauthorized pleadings or papers and shall be stricken from the record.

Intermittent Appearance of Counsel. Lastly, Gregg L. Bernstein and Lee Fugate wish to make a "limited appearance" in this case on behalf of Defendant Digges "for the limited purpose of filing and presenting Defendant's Motion for Relief from Injunction." (Doc. No. 51). This paper does not indicate that Mr. Bernstein and Mr. Fugate are acting as substitute counsel or as additional counsel of record. Further, none of the documents filed by Mr. Bernstein and Mr. Fugate purport to be coordinated thorough or with Mr. Martin, the attorney who presently is responsible for conducting this action. *See* Local Rule 1.05(c). Consequently, the motion of Defendant Digges for relief from injunction (Doc. No. 53) is also an unauthorized pleading, and it is denied without prejudice to reassertion in conformance with the Local Rules of Court. In addition, the Court denies, without prejudice to reassertion if appropriate, the motion of Gregg L. Bernstein to appear *pro hac vice*. (Doc. No. 55).

Conclusion

Based on the foregoing, the Court rules as follows:

1. The Motion to Set Aside Entry of Default (Doc. No. 25), Memorandum in Support of Motion to Set Aside Entry of Default and Request for Hearing (Doc. No. 26), Answer to Complaint (Doc. No. 27), and Motion to Strike (Doc. No. 41) of Defendant Edward S. Digges, Jr. are **STRICKEN** with leave to reassert upon compliance with the Local Rules of Court.

¹ The Local Rules of this Court were amended pursuant to Federal Rules of Civil Procedure 83 effective May 31, 2006. The current version of Local Rule 2.03(d) is identical to the version shown except that the final sentence has been stricken. The amended version of the Local Rules can be obtained from the Court's internet website at <http://www.flmd.uscourts.gov>.

2. The Motion to Appear Pro Hac Vice (Doc. No. 55) of attorney Gregg L. Bernstein and the Motion of Defendant Edward S. Digges, Jr. for Relief from Injunction (Doc. No. 53) are **DENIED** with leave to reassert.

DONE and **ORDERED** in Chambers in Orlando, Florida on June 27, 2006.

A handwritten signature in black ink, reading "Patricia C. Fawsett", written over a horizontal line.

PATRICIA C. FAWSETT, CHIEF JUDGE
UNITED STATES DISTRICT COURT

Copies furnished to:

Counsel of Record