

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

**NO. 3:75-CR-00026-3
NO. 5:06-CV-00024-F**

UNITED STATES OF AMERICA)	
)	MOTION TO WITHDRAW
vs.)	AS COUNSEL OF RECORD
)	
JEFFREY R. MacDONALD)	

NOW COMES the Defendant, Jeffrey R. MacDonald, joined by undersigned counsel of record Sue Genrich Berry, and moves this Honorable Court to allow Sue Genrich Berry to withdraw as counsel of record and appoint other counsel. As grounds in support, the Defendant would show:

1. The undersigned was appointed to represent the Defendant in post-conviction proceedings and had not previously represented the Defendant;
2. At the time the undersigned was appointed, only *pro bono* counsel, Christine Mumma of the North Carolina Center on Actual Innocence, remained from a team of lawyers who had been representing the Defendant;

3. In an effort to give reasonable consideration to the record in this case, the undersigned sought and was allowed a copy of the trial transcript. The undersigned read large portions of that transcript;
4. The undersigned also obtained and reviewed large portions of the court filings since 2006, and, on several occasions, the opinion of the Fourth Circuit Court of Appeals from April, 2011;
5. The undersigned traveled to the United States Bureau of Prisons facility where the Defendant is housed and over two days spent approximately eight hours with the Defendant;
6. The undersigned and the Defendant have insurmountable differences regarding the evidence and the law applicable in this case;
7. Based upon the undersigned's review of the record, time spent with the Defendant and legal and practical experience, the undersigned does not believe these differences can be resolved, and the undersigned, therefore, joins the Defendant in seeking to be allowed to withdraw as counsel of record so that other counsel may be appointed; and
8. It is the understanding of the undersigned that Ms. Mumma continues to represent the Defendant.

WHEREFORE, the Defendant, Jeffrey R. MacDonald, joined by undersigned counsel of record Sue Genrich Berry, moves this Honorable Court to allow Sue Genrich Berry to withdraw as counsel of record and other counsel be appointed.

Respectfully submitted this the 5th day of February, 2012.

/s/ Sue Berry

Sue Genrich Berry, Attorney for Defendant
Bowen and Berry, PLLC
PO Box 2693, Wilmington, NC 28402
910.763.3770
NC State Bar #16308

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing and proposed Order was served upon:

John Bruce
Assistant United States Attorney
Suite 800, Federal Building
310 New Bern Avenue
Raleigh, NC 27601-1461

by CM/ECF notification.

A copy will be mailed first class, postage prepaid, to the Defendant, Jeffrey R. MacDonald, #00131-177, FCI Cumberland, Federal Correctional Institution, PO Box 1000, Cumberland, MD 21501, on February 6, 2012.

This the 5th day of February, 2012.

/s/ Sue Berry

Sue Genrich Berry
Attorney for Defendant/Petitioner
Bowen and Berry, PLLC
PO Box 2693, Wilmington, NC 28402
910.763.3770
N.C. State Bar Number 16308

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**NO. 3:75-CR-00026-3
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UNITED STATES OF AMERICA)	ORDER ALLOWING
)	MOTION TO WITHDRAW
vs.)	AS COUNSEL OF RECORD
)	
JEFFREY R. MacDONALD)	

This cause having come on to be heard upon the Defendant's Motion to allow counsel of record Sue Genrich Berry to withdraw as joined by the Defendant and Sue Genrich Berry, and for good cause shown;

IT IS ORDERED that Sue Genrich Berry is allowed to withdraw as counsel of record and new counsel shall be appointed.

This the _____ day of February, 2012.

Honorable James C. Fox
Senior United States District Court Judge