

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO**

TOM RETZLAFF
Plaintiff,

v.

LYNDA YVONNE DE LA VINA,
DIANE BAKER WALZ, KYLE
MERLETTE SNYDER, KATHERINE ANNE
POPE,
Defendants.

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NO: 5:08-CV-00170-OLG

**DEFENDANTS' MOTION TO COMPEL CLARIFICATION OF
ATTORNEY'S STATUS**

TO THE HONORABLE U.S. DISTRICT JUDGE ORLANDO L. GARCIA:

Defendants Lynda de la Vina, Diane Walz, Kyle Snyder, and Katherine Pope (the “Defendants”), named in their personal capacities by Plaintiff Tom Retzlaff, move to compel Retzlaff and his attorney to clarify by confirmation statement, or withdrawal, attorney Louis D. Martinez’s status in this litigation. Defendants seek this clarification in light of the Court’s and Defendants’ information that Martinez represents Retzlaff in this case, in relationship to Retzlaff’s and Martinez’s past contradictory announcements and conduct indicating that Martinez does not represent Retzlaff. Defendants aim to achieve this clarification so they may properly and efficiently confer with the opposing party in this case and avoid additional, later claims that Retzlaff lacked notice about case events.

PROCEDURAL BACKGROUND AND RELEVANT FACTS

1. Plaintiff Retzlaff is a former graduate student at the University of Texas at San Antonio (the “UTSA”) subjected to disciplinary expulsion in May 2008. He is a prolific pro se litigator who courts have repeatedly restricted, most recently

through *Order Declaring Tom Retzlaff a Vexatious Litigant* signed October 15, 2008. Exhibit A (attached).

2. Pending before this Court is one of the many lawsuits filed in 2007 and 2008 against the University of Texas at San Antonio (UTSA) or its officials. R. Item 3 at 2-3.
3. Plaintiff, through his actual attorney of record, Louis D. Martinez, filed the present case in state court against the same defending parties. *Retzlaff v. de la Vina, et al.*, No. 336249 (Co. Ct. At Law No. 10, Bexar County, Tex.). Defendants properly removed the case to federal court in March 2008. R. Item 1. In June 2008, Martinez wrote to UTSA law enforcement that he represented Retzlaff and directed a Captain to “refrain from contacting my client directly.” R. Item 3-7.
4. Martinez remains the attorney-of-record for Retzlaff in this lawsuit, according to the federal PACER system and a confirmation provided by the clerk personnel of this Court. Yet, by letter to Defendants in June 2008, Martinez also stated that he intended to withdraw from the case. R. Item 3-6. And by declaration at the start of Retzlaff’s deposition in September 2008, Martinez declared: “I don’t consider myself to be the attorney of record in this case.” Exhibit B at 5 (attached).
5. Defendants need to confer with their opposing party for ordinary litigation purposes, yet the proper contact for Defendants is unclear. Moreover, the posture and history of this case require that Defendants’ promptly achieve the requested clarification—in the past, Retzlaff has attempted to thwart the orderly progression of the case by alleging that he did not receive notifications. R. Items 10-11.

CONCLUSION

For the foregoing reasons, Defendants ask the Court to enter an Order requiring Plaintiff Retzlaff and attorney Martinez to confirm or clarify Martinez's relationship as legal counsel to Plaintiff in this case, including by filing a withdrawal, as necessary.

Respectfully submitted,

GREG ABBOT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Litigation

ROBERT B. O'KEEFE
Chief, General Litigation Division

_____/s/_____
Lars Hagen

LARS HAGEN
Texas Bar No. 24034470
Assistant Attorney General
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2120 (Telephone)
(512) 320-0667 (Facsimile)

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE AND CONFERENCE

Before the start of Plaintiff's September 2008 deposition, undersigned counsel conferred in person with Plaintiff's counsel about the issue and request raised in this Motion, but Plaintiff's counsel has taken no action through this Court to formally clarify his status. I hereby certify that a true and correct copy of the foregoing document has been served via facsimile transmission and U.S. Certified Mail, Return Receipt Requested, on November 25, 2008, to the following:

LOUIS D. MARTINEZ
Law Office of Louis D. Martinez
1004 S. St. Mary's Street
San Antonio, Texas 78205

_____/s/_____
Lars Hagen
LARS HAGEN
Assistant Attorney General