

HILLSBOROUGH, SS STATE OF NEW HAMPSHIRE
HILLSBOROUGH COUNTY SUPERIOR
SOUTH
226-2019-CR-00814

STATE OF NEW HAMPSHIRE

V.

DALE HOLLOWAY

**PARTIALLY ASSENTED MOTION TO DISPOSE OF REQUIREMENT OF
ATTORNEY DOLAN AND ATTORNEY MACLACHLAN FROM PRESENCE ON
AUGUST 28TH OR
IN THE ALTERNATIVE MOTION TO CONTINUE HEARING RE: RELINQUISHING
FILE TO DEFENDANT.**

NOW comes Attorney William Dolan and Attorney John MacLachlan (Counsels) and move to dispose of the requirement for them to be present in court on August 28th. The State assents to this motion.

In the alternative Counsels requests that the hearing on providing Mr. Holloway the client file be continued. The State does not assent to a continuance of this hearing out of a concern that it would cause a continuance of the trial scheduled to start on October 30th.

Counsels will both be on vacation and have an alternative plan to ensure a proper transition of the client file.

This motion does not affect a hearing on access to resources at NHDOC that is set for the same time slot as the motion in regard to Mr. Holloway's file.

In support of this motion Counsel states:

Clerk's Notice of Decision
Document Sent to Parties
on 08/25/2023

BACKGROUND

1. Both Attorney William Dolan and Attorney John MacLachlan were appointed to represent the Mr. Holloway in February 2022.

The hearing scheduled for August 28, 2023 is continued to allow for the presence of Attorneys Dolan and MacLachlan to ensure an appropriate release of all their files to Mr. Holloway. The Court appreciates the expedited transfer of these files to the prison on August 24, 2023. It appears that the transfer has been completed in compliance with the applicable ethical rules.



Honorable Charles S. Temple
August 25, 2023

2. On or about July 12, 2023, the defendant filed a motion for status of counsel. (Index #327)
3. On or about August 3, 2023, the defendant simultaneously filed a motion “to withdraw appointed counsel” (Index #333) and a motion “for court order for contract attorneys to relinquish files” (Index #334)
4. The Court held a Status of Counsel hearing on August 7, 2023. After this hearing both Attorney MacLachlan and Attorney Dolan were discharged from representing Mr. Holloway.
5. Mr. Holloway is proceeding pro-se with stand-by counsel.
6. Pursuant to the defendant’s motion the Court ordered a hearing be set to discuss the file transfer to Mr. Holloway.
7. The Court ordered Counsels to be present at this hearing to assist the Court in ensuring an appropriate transfer of their files.
8. Counsels have “no position” on the motion itself and understand their duty under any applicable ethical rules.
9. Counsels are aware of the New Hampshire Bar Association Ethics Committee Advisory Opinion #2015-16/05 which outlines the various requirements that govern this situation.
10. Counsel will comply with their requirements and are more than willing to assist the Court with this issue.
11. The court scheduled this hearing for August 28, 2023.
12. The week of August 28th to September 1st both Attorney MacLachlan and Attorney Dolan are on prescheduled vacations and are not available to attend in person.
13. Attorney MacLachlan has represented that he could attend via Webex.

14. Counsels reached out to the court regarding time slots to either advance the hearing to before the 28th or continue until after September 1st.
15. There is nothing available before the 28th and availability after the 1st is dependent on the jury trial schedule after Trial Management Conferences on Friday August 25th.

EFFORTS TO ENSURE COMPLETE AND PROMPT FILE TRANSFER

16. To address the proper transition of the client file to Mr. Holloway Counsels have coordinated with each other's offices and the NHDOC.
17. Counsels assembled the file from Attorney MacLachlan's office and Attorney Dolan's office.
18. Counsels compared what is already in paper format with what is available electronically.
19. All paper materials not already scanned are now scanned.
20. All electronic discovery is available in one hard drive for Mr. Holloway.
21. In addition to discovery, the entire client file is in electronic form on the same hard drive as the discovery for Mr. Holloway.
22. To whatever extent possible the file will be provided to Mr. Holloway in both electronic and paper formats.
23. Out of an abundance of caution and understanding Mr. Holloway's custody status Counsels have printed almost every document in their possession that was not already printed.
24. This has been a great effort, over 2500 pages were printed.
25. Attorney Dolan did this to make sure that it was done correctly, completely, and the quickest manner possible.

26. It has taken several hours to assemble, print, copy, and/or collate the materials in an electronic and paper format manner most beneficial to Mr. Holloway.
27. Counsels reached out to the NH Department of Corrections to coordinate a time to drop off the file in person and any other requirements.
28. Attorney Dolan currently has an appointment with Warden Edmark to provide the file to her office at the New Hampshire State Prison for Men on Thursday August 24, 2023 at 2pm.
29. Warden Edmark provided her person contact information to ensure that any problems are addressed immediately.

ACCESS TO FILE AT NHDOC

30. The file transition will be accomplished by end of business August 24th.
31. NHDOC represented that any USBs or CDs “will have to be held by staff and accessed during his law library [time]” and “NHDOC has policy limitations as to how much paperwork any resident can have in their cell at one time. However, NHDOC will hold anything in excess while he has active litigation that he will be permitted to work with unit leadership to access.”
32. Any limitations to access of the file by Mr. Holloway in NHDOC can be addressed by the Court during the hearing on those issues without Counsels.
33. The presence of Attorney MacLachlan and Attorney Dolan is not relevant to access to the file at NHDOC once the file is transferred to NHDOC.

MOVING FORWARD

34. Counsels if ordered by the Court can certify that the file has been provided to NHDOC late the 24th or the 25th in pleading form.

35. Counsels will maintain a copy of the file.
36. When Counsels learn who will be stand by counsel for Mr. Holloway, the file will be made available via an encrypted file service immediately to that person via e-mail link and password.
37. If that Counsel requests a hard drive, one will be made available as quickly as possible.
38. Counsels will direct their staff to prioritize this task over any other task subject to emergencies.

CONCLUSION

39. Counsels will transfer the complete file in both digital and paper format to the NHDOC on August 24, 2023.
40. After that Counsel's role is to ensure transfer to stand-by counsel when one is appointed.
41. Given the work performed to provide the file the relevance of physical attendance by Attorney Dolan and Attorney MacLachlan is moot or at least greatly diminished.
42. Both Counsels will be on vacation.
43. The State assents to disposing Counsels from attending in person but does not assent to a motion to continue the hearing.

WHEREFORE, the defense respectfully requests that this Honorable Court:

- A. Grant this motion not require Attorney Dolan's or Attorney MacLachlan's physical presence on August 28th.
- B. In the alternative continue the hearing to after September 1st.
- C. Grant any such other relief as may be proper and just.

August 23, 2023.

Respectfully submitted, Eric
Roman
By his attorney,
/s/William Dolan
William Dolan. 270935
97 Central St Unit 300
Lowell, MA 01852

978 483 0329

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing pleading has been sent all parties via the electronic filing system.

/s/ William Dolan
William Dolan, Esq.