

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MUMIA ABU-JAMAL,
Petitioner,

v.

MARTIN HORN, Commissioner, Pennsylvania
Department of Corrections, ET AL.,
Respondents.

CIVIL ACTION

NO. 99-5089

FILED APR 6 2001

ORDER

And now, this 6th day of April, 2001, upon consideration of petitioner's motion for withdrawal of counsel (Doc. No. 58), the Commonwealth's letter response, and petitioner's reply (Doc. No. 60),¹ it is hereby ORDERED AND DECREED that the withdrawal of petitioner's counsel is approved immediately upon the entry of appearance of new counsel.² Additionally,

¹No responses were submitted from petitioner's counsel.

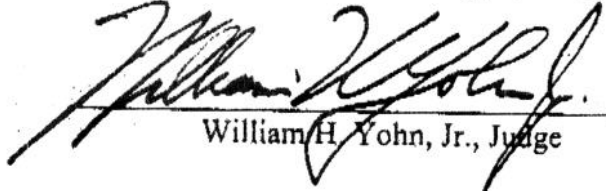
²The Supreme Court has advised that "[i]t is well settled that habeas corpus is a civil proceeding." *Browder v. Dir., Dept. of Corr.*, 434 U.S. 257, 269 (1978) (citations omitted). Moreover, "the Federal Rules of Civil Procedure apply in habeas proceedings only 'to the extent that the practice in such proceedings is not set forth in statutes of the United States and has heretofore conformed to the practice in civil actions.'" *Id.* (citations omitted). Because the habeas statute does not set forth a procedure for substitution of counsel, the court will look to the Federal Rules of Civil Procedure. Local Rule 5.1(c) of Civil Procedure for the Eastern District of Pennsylvania states that "[a]n attorney's appearance may not be withdrawn except by leave of court, unless another attorney of this Court shall at the same time enter an appearance for the same party."

Petitioner has retained private counsel in this matter. As such, he may change counsel at any time for whatever reason, subject to the court's approval. Therefore, the court does not need to reach the issue of the alleged conflict of interest. Moreover, petitioner apparently has the resources to hire new counsel and has not requested the court to appoint counsel pursuant to 21 U.S.C. § 848(q)(4)(B). See *McFarland v. Scott*, 512 U.S. 849, 854 (1994) ("On its face, this statute grants indigent capital defendants a mandatory right to qualified legal counsel and related services '[i]n any [federal] post conviction proceeding.'"). Accordingly, withdrawal of counsel is approved immediately upon the entry of appearance by new counsel.

CLERK OF COURT

4-9-01

the court will not conduct oral argument, an evidentiary hearing, or issue an opinion concerning the pending petition for habeas corpus relief for a period of at least thirty (30) days from the date of this order so that petitioner may have an opportunity for new counsel to enter an appearance.



William H. Yohn, Jr., Judge