Circuit Court for Baltimore City
Case No. 24-C-15-002080

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 607

September Term, 2016

IN RE: MOTION TO WITHDRAW BY COOPER & TUERK, LLP

Woodward, C.J,
Graeff,
Berger,

JJ.

Opinion by Berger, J.

Filed: June 5, 2018

This appeal concerns the propriety of orders entered by the Circuit Court for Baltimore City, denying a motion by Cooper & Tuerk, LLP, appellant,[1] to withdraw its appearance in a civil action before that court, as well as an ensuing motion for reconsideration of the denial of the original motion. Cooper & Tuerk had been retained by Junior Rosario, appellee, to represent him in a lawsuit against his former landlord, Jung Baik. At the time that Cooper & Tuerk moved to withdraw its appearance, Rosario owed approximately $28,000 in outstanding legal fees to Cooper & Tuerk and had paid only $500 toward that bill.

After its motions were denied, Cooper & Tuerk noted this interlocutory appeal[2] and poses one question, which we have rephrased:[3]

> Whether the circuit court abused its discretion when it denied Cooper & Tuerk's motion to strike appearance and motion for reconsideration.

For the reasons explained herein, we shall conclude that the circuit court abused its discretion. We, therefore, vacate the circuit court's order denying Cooper & Tuerk's motion to withdraw.

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[1] Two attorneys from that law firm, Carl E. Tuerk, Jr., and W. Timothy Sutton, also are appellants in this case. Throughout the remainder of this opinion, we shall refer to appellants, collectively, as "Cooper & Tuerk" or the "firm."

[2] We have appellate jurisdiction under the collateral order doctrine. *In re Franke*, 207 Md. App. 679, 685-89 (2012).

[3] The question as presented in Appellants' Brief was: "Did the circuit court err when it denied counsels' motion to strike appearance and motion for reconsideration?" That is a question, however, that we review for abuse of discretion, not error. *See*, *e.g.*, *Serio v. Baystate Props., LLC*, 209 Md. App. 545, 554 (2013); *Franke*, 207 Md. App. at 690.

I.

Rosario is the erstwhile proprietor of a corner grocery store, located at 233 South Fulton Street in Baltimore City. He leased the premises from Baik, the owner of the property. After a dispute arose concerning unpaid water bills, Baik filed an action in the District Court of Maryland in Baltimore City on January 22, 2015. Baik alleged that Rosario had breached the lease and sought, *inter alia*, Rosario's eviction from the premises. On March 4, 2015, a default judgment was entered, granting possession of the property to Baik.

Rosario claimed that he had never received notice of the breach-of-lease action. On March 26, 2015, Rosario retained Paul R. Schuman and the Global Law Firm, LLC (collectively, "Global"). Thereafter, Rosario, through Global, moved to vacate the District Court's default judgment on the grounds of fraud, mistake, or irregularity. Five days later, the District Court denied Rosario's motion to vacate judgment. The following day, Rosario noted an appeal on the record, but his counsel, mistakenly believing that no appeal bond was required, did not file an appeal bond, and the appeal was subsequently dismissed.

On April 16, 2015, the Baltimore City Sheriff evicted Rosario from the premises. On April 24, 2015, Rosario, through Global, filed a seven-count complaint against Baik in the Circuit Court for Baltimore City. Count I of the complaint sought a temporary restraining order and injunction to prevent Baik from re-letting or selling the disputed

property. The remaining counts of the complaint alleged various tort and contract claims.[4] Simultaneously with the filing of the complaint, Rosario filed a Motion for Emergency Temporary Restraining Order and for Preliminary Injunction, largely echoing the allegations in Count I of the complaint.

In May 2015, Rosario sought new counsel and, on May 29, 2015, entered into a retainer agreement with Cooper & Tuerk to represent him in both the District Court and circuit court proceedings.[5] That agreement provided that Rosario would pay an initial retainer of $1,500 and would thereafter maintain a minimum balance of $500 in escrow. Cooper & Tuerk would bill Rosario on an hourly basis at the rate of $400 per hour for Carl E. Tuerk Jr. (the managing attorney on the case), $300 per hour for associates, and $150-$200 per hour for paralegals and support staff, with all time to be billed in one-tenth hour increments. Rosario was to be responsible for all costs and expenses "incurred on [his] behalf regarding this matter," such as court costs, filing fees, private process fees, transcription, and deposition costs. The retainer agreement further provided that Rosario would pay "any outstanding balance within fifteen (15) days of the date of any billing statement on which there is such a balance" and that interest would accrue on any overdue

[4] Counts II through VII of the complaint alleged tortious interference with economic relations, tortious interference with prospective advantage, breach of contract, wrongful eviction, conversion, and engaging in frivolous and malicious litigation.

[5] Specifically, the retainer agreement covered District Court Case Number 010100013222015 and Circuit Court Case Number 24-C-15-002080.

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balance.[6] The agreement emphasized that the firm had extended to Rosario no guarantee of success:

> It is expressly acknowledged by you [that is, Rosario] that this law firm has not made any warranties or representations to you, nor have we given you any assurances as to the favorable or successful resolution of your claim or defense of the action referred to above [that is, the cases expressly covered by the agreement]; nor as to the favorable outcome of any legal action that may be filed; nor as to the nature or amount of any awards or distributions of property, attorney fees, costs, or any other aspects of this matter. All of this law firm's expressions relative to your case are limited only to estimates based upon our experience and judgment and are only our opinion. Such expressions should not be considered as representations, promises, or guarantees of results, which might be obtainable, either by way of a negotiated settlement or in a contested trial.

Finally, the agreement provided:

> In addition to any legal remedies available to the Firm, failure to make timely payment of any outstanding balance will entitle the Firm to terminate representation and move to have the appearance of Carl E. Tuerk, Jr., Esquire and Cooper & Tuerk, LLP[,] withdrawn from any court action or other proceeding. Such termination or withdrawal will not, however, relieve you of the obligation to pay any outstanding fees or expenses owed to the Firm.

On June 15, 2015, pursuant to Rosario's request, Carl E. Tuerk, Jr., Esquire, entered his appearance in the circuit court on behalf of Rosario. Two days later, Paul R. Schuman, Esquire, withdrew his appearance.

[6] The agreement provided for a fifteen-day period, from the date of a billing statement, within which Rosario was permitted to notify the firm of "any questions regarding" that statement. The agreement further provided that if Rosario failed to inquire within that time, "the billing statement shall be deemed accurate."

On July 2, 2015, Baik filed an answer to Rosario's complaint contending that there was no basis for Rosario's request for equitable relief and that the remaining six counts of his complaint could be addressed "independent[ly] of, and without the need for the restraining order or injunctive relief." Rosario, through Cooper & Tuerk, voluntarily withdrew his Motion for Emergency Temporary Restraining Order and for Preliminary Injunction because it had been mooted by Baik's subsequent sale of the disputed property, and the matter proceeded on the remaining six counts of the complaint.

The parties thereafter took depositions of various witnesses and exchanged discovery materials. That was no small task, as neither Rosario nor Baik is a native speaker of English, and both require interpreters. On November 20, 2015, a pre-trial scheduling order was issued, and, pursuant to a subsequent amendment to that order, trial was scheduled to begin on June 27, 2016.

II.

On April 8, 2016, two-and-one-half months before the scheduled trial date, Cooper & Tuerk sent Rosario a letter stating that, because Rosario owed more than $28,000 in outstanding legal fees and that those arrearages had existed "largely since October of 2015," the firm intended to withdraw its representation "pursuant to [Md.] Rule 2-132."[7]

[7] Maryland Rule 2-132 provides:

> **(a) By Notice.** An attorney may withdraw an appearance by filing a notice of withdrawal when (1) the client has another attorney of record; or (2) the attorney entered a limited appearance pursuant to Rule 2-131(b), and the particular

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proceeding or matter for which the appearance was entered has concluded.

(b) By Motion. When an attorney is not permitted to withdraw an appearance by notice under section (a) of this Rule, the attorney wishing to withdraw an appearance shall file a motion to withdraw. Except when the motion is made in open court, the motion shall be accompanied by the client's written consent to the withdrawal or the moving attorney's certificate that notice has been mailed to the client at least five days prior to the filing of the motion, informing the client of the attorney's intention to move for withdrawal and advising the client to have another attorney enter an appearance or to notify the clerk in writing of the client's intention to proceed in proper person. Unless the motion is granted in open court, the court may not order the appearance stricken before the expiration of the time prescribed by Rule 2-311 for responding. The court may deny the motion if withdrawal of the appearance would cause undue delay, prejudice, or injustice.

(c) Notice to Employ New Attorney. When, pursuant to section (b) of this Rule, the appearance of the moving attorney is stricken and the client has no attorney of record and has not mailed written notification to the clerk of an intention to proceed in proper person, the clerk shall mail a notice to the client's last known address warning that if new counsel has not entered an appearance within 15 days after service of the notice, the absence of counsel will not be grounds for a continuance. The notice shall also warn the client of the risks of dismissal, judgment by default, and assessment of court costs.

(d) Automatic Termination of Appearance. When no appeal has been taken from a final judgment, the appearance of an attorney is automatically terminated upon the expiration of the appeal period unless the court, on its own initiative or on motion filed prior to the automatic termination, orders otherwise.

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Cooper & Tuerk subsequently filed a Motion for Leave to Strike Appearance ("motion to withdraw") in the circuit court on April 14, 2016.[8]

Several days after Cooper & Tuerk filed its motion to withdraw, Baik filed a motion for summary judgment, which was received by the court on April 20, 2016[9] and docketed the following day. On May 4, 2016, the circuit court denied Cooper & Tuerk's motion to withdraw. In denying the motion to withdraw, the court concluded that, because the case was scheduled for a pre-trial conference on May 13, 2016, and trial was scheduled to begin on June 27, 2016, "withdrawal of the appearance would cause undue delay, prejudice, and injustice."[10]

Immediately upon being informed that the circuit court had denied its motion to withdraw, Cooper & Tuerk filed a motion for reconsideration. In its motion for reconsideration, Cooper & Tuerk stated that it was then owed $27,832.81, that Rosario had last made payment of $500 on March 7, 2016, and that it had "no expectation that any payment for future work performed by counsel in this case [would] ever be made." The

[8] The docket entries reflect that the motion was entered on April 17, 2016. April 17, 2016 was a Sunday. Two copies of the motion appear in the record, but the original motion appears to be missing from the record. This Court was unable to independently verify whether the date stamp is consistent with the docket entry. The circuit court subsequently stated, in its order denying Cooper & Tuerk's motion to withdraw, that the motion had been filed on April 15, 2016.

[9] Under the scheduling order, April 20, 2016 was the deadline for filing a motion for summary judgment without leave of court.

[10] The court's order made no mention of Baik's pending motion for summary judgment.

firm further asserted that it had "expended not just time" but had also "made payments for interpreter and deposition costs" and that "[a]dditional costs [would] be required to continue representation." According to Cooper & Tuerk, it faced an "unreasonable financial burden" if it were "not allowed to withdraw at this time."

Recognizing that Baik's motion for summary judgment was pending, Cooper & Tuerk assured the court that it would "file a response to that motion to prevent any possibility that there [would] be any injustice to [Rosario]." Thereafter, during the pendency of its motion for reconsideration, Cooper & Tuerk filed both a motion to strike Baik's summary judgment motion as untimely under Rule 2-501(a)[11] and a pre-trial statement, which, among other things, opposed the same motion on the ground that there were disputes of material fact. Finally, observing that there were more than two months from the time when it first notified Rosario of its intent to withdraw until the scheduled commencement of trial, which was sufficient time for Rosario to obtain new counsel, Cooper & Tuerk maintained that "no undue delay, prejudice, or injustice [would] result from" the withdrawal of its representation.

Rosario responded by letter to the firm's motion for reconsideration, stating that he would "not have time or the money to get another lawyer" if the court granted the motion.

[11] In the motion to strike Baik's motion for summary judgment, Cooper & Tuerk pointed out that the scheduling order had provided that no motion for summary judgment could be filed after April 20, 2016, except with leave of court, *see* Md. Rule 2-501(a), and that Baik's motion, though purporting to have been filed at the deadline, lacked the required certificate of service, thereby rendering it untimely, as the certificate of service was not filed until three days later.

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Rosario asserted that he had "tried to contact several lawyers and ha[d] been told by all of the lawyers that they are not willing to take over this case because of the timing and how 'dirty' this case is." Attached to his letter was e-mail correspondence between Cooper & Tuerk and his wife, Tiffany Javier,[12] discussing outstanding fees and the possibility of partial payments. Rosario concluded his letter by imploring the court not to "strike Carl's appearance from my case until my case is completed." Several weeks later, while Cooper & Tuerk's motion for reconsideration was still pending, Rosario filed a complaint against Cooper & Tuerk with the Attorney Grievance Commission.

On June 13, 2016, the circuit court held a hearing on the motion for reconsideration. The court indicated that it had denied Cooper & Tuerk's motion to withdraw because of Baik's pending motion for summary judgment and acknowledged that "it should have been in the order" but was not. The court explained that, had it granted the motion, there would have been "no counsel to respond to that motion for summary judgment" and that granting the motion "wasn't in the interest of justice[.]"[13]

Cooper & Tuerk responded that it had filed a motion to strike Baik's motion for summary judgment and thereafter filed a response to that motion and further attended the pre-trial conference. The firm stated two grounds for its desire to withdraw its

[12] Because Rosario could not read or write English, Cooper & Tuerk frequently communicated with Rosario's wife, Tiffany L. Javier, instead of with Rosario, when discussing the case.

[13]The circuit court further commented that the motion had not been "ripe" when filed and that it "wouldn't have been ripe until the beginning of May," which would not have afforded Rosario "sufficient time" to obtain replacement counsel.

representation of Rosario: first, because he had not paid them in accordance with the terms of the retainer agreement, having paid only $500 when his past-due balance was nearly $28,000; and second, because Rosario's filing of the attorney grievance complaint created a conflict that rendered it difficult, if not impossible, to "zealously represent him."

Rosario acknowledged that he had received the April 8th notice of intent to withdraw appearance from Cooper & Tuerk and further conceded that he owed "a lot of money" to the firm. He contended, however, that, when initially he had retained Cooper & Tuerk to represent him, Carl Tuerk had assured him and his wife that, upon the conclusion of the case, he would "take his percentage of the money." Rosario further asserted that, upon expressing his concern to "the lawyer" that he would be unable to maintain the contractually required escrow account balance of $1,500,[14] the attorney assured him, "yeah, don't worry about that" because "[t]he person who I'm suing, that person's going to pay my attorney fees, don't worry about it." Thereafter, when the firm sent him a bill for $7,000, Rosario claimed that Tuerk told him "not to worry about it[.]" According to Rosario, Tuerk continued to tell him not to worry after sending him a bill for $17,000 because Baik "was going to pay that and more, as a result[] of the damages that she caused me." In conclusion, Rosario claimed that Cooper & Tuerk's asserted reason for wishing to withdraw -- his failure to pay his legal bills -- was an "excuse," given what he claimed had been the firm's practice to excuse his non-payment pending resolution of the case.

[14] The retainer agreement actually required that Rosario maintain a minimum escrow balance of $500.

Although a copy of the signed retainer agreement had been attached to Cooper & Tuerk's motion to withdraw, the court commented that it did not "know what the agreement was." In rebuttal, Tuerk responded that the "agreement was clearly an hourly fee agreement" and that "[i]t was never a contingent fee agreement." He acknowledged, however, that he had given Rosario "some slack," telling him to "make some payment." As for Rosario's suggestion that he believed that he had, in effect, a contingent fee agreement, Tuerk countered that Rosario had gone over the contract with his wife, Javier, "who reads and speaks English," and "[t]hey knew what they were getting into." Tuerk further informed the court that, as of the time of the hearing, Rosario owed approximately $32,000.

After Tuerk, Rosario, and counsel for Baik had an opportunity to address the court, the circuit court denied Cooper & Tuerk's motion for reconsideration. The court found that the firm had not moved to withdraw in a timely fashion, and it believed that the purported conflict the firm faced as a consequence of Rosario's filing of the attorney grievance complaint was inconsequential:

> And it sounds like, to me, you really had many months that you could have moved to strike your appearance. Because it sounds like month after month Mr. Rosario was not paying his bill. But you wait until April 14th to file the motion, which isn't ripe until May, the beginning of May. And forget the fact that the motion for summary judgment was filed on April 20th, the pre-trial conference was schedule[d] for May 13th.
>
> And so it is not two months prior to, and you keep saying the trial, but there are other events that you would be representing your client; the first of which is the pre-trial conference. And finally, on April 26th, 2016, you know, with the trial on June 27th, 2016, I suppose technically that's two

> months. But the motion wouldn't have been ripe again until the beginning of May. And we had this pre-trial conference scheduled.
>
> I don't really believe that there's a conflict with respect to the grievance, because it sounds like the grievance is all over whether or not you get out of the case. It also seems like it might be moot if in fact you do represent him in the trial. So I'm denying your motion for reconsideration. I'm not going to strike your appearance. And I'm denying your request to stay the matter.

After the denial of its motion to withdraw and during the pendency of its motion for reconsideration, Cooper & Tuerk noted an interlocutory appeal, which, pursuant to Maryland Rule 8-202(c), is deemed to have been filed immediately after the denial of the latter motion. The firm subsequently moved, before this Court, to stay the proceedings in the circuit court pending the resolution of this appeal, and we granted that motion.

III.

Because Cooper & Tuerk's motion for reconsideration was filed within 10 days of the court's order denying the motion to withdraw, its "notice of appeal filed within 30 days after the entry of the trial court's ruling" on the motion for reconsideration "confers on this Court the authority to review the ruling on such post trial motion, as well as the earlier judgment." *Brethren Mut. Ins. Co. v. Suchoza*, 212 Md. App. 43, 68 n.11, *cert. denied*, 434 Md. 312 (2013).

We review a circuit court's denial of a motion to withdraw for abuse of discretion. *In re Franke*, 207 Md. App. 679, 690 (2012). We apply the same standard in reviewing a circuit court's ruling on a motion for reconsideration. *Wilson-X v. Dep't of Human Res.*, 403 Md. 667, 674-75 (2008). An abuse of discretion occurs "where no reasonable person

would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles." *Sumpter v. Sumpter*, 436 Md. 74, 85 (2013) (quoting *North v. North*, 102 Md. App. 1, 13-14 (1994) (en banc)) (internal citations omitted).

IV.

"There are two Maryland rules governing when an attorney may withdraw from a case." *Franke*, 207 Md. App. at 690. The first is Rule 1.16 of the Maryland Lawyers' Rules of Professional Conduct ("MLRPC"),[15] which then provided in pertinent part:

> (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
>
> * * *
>
> (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled; [or]
>
> (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client[.]
>
> * * *
>
> (c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

[15] "Effective July 1, 2016, the Maryland Lawyers' Rules of Professional Conduct ("MLRPC") were renamed the Maryland Attorneys' Rules of Professional Conduct ("MARPC") and re-codified, without substantive change, in Title 19 of the Maryland Rules." *Attorney Grievance Comm'n v. Giannetti*, 456 Md. 465, 468 n.1 (2017). The proceedings below took place just prior to the effective date of that rules revision, and, accordingly, we shall, throughout this opinion, refer to the version of the rules then in effect.

The second is Rule 2-132 of the Maryland Rules of Civil Procedure. Subsection (b) of that rule states:

> **(b) By Motion.** When an attorney is not permitted to withdraw an appearance by notice under section (a) of this Rule, the attorney wishing to withdraw an appearance shall file a motion to withdraw. Except when the motion is made in open court, the motion shall be accompanied by the client's written consent to the withdrawal or the moving attorney's certificate that notice has been mailed to the client at least five days prior to the filing of the motion, informing the client of the attorney's intention to move for withdrawal and advising the client to have another attorney enter an appearance or to notify the clerk in writing of the client's intention to proceed in proper person. Unless the motion is granted in open court, the court may not order the appearance stricken before the expiration of the time prescribed by Rule 2-311 for responding. The court may deny the motion if withdrawal of the appearance would cause undue delay, prejudice, or injustice.

For guidance in the application of these rules, we turn to *Franke*, the leading Maryland authority on the subject.

In that case, Raymon K. Nelson, M.D., was the trustee of a beneficiary trust that had been established by his late brother, Ralph L. Nelson, M.D., shortly before Ralph's death. 207 Md. App. at 680-81. A dispute had arisen between Raymon and the trust's beneficiaries,[16] who accused him of misappropriating and dissipating the trust's assets. *Id.* at 683. The beneficiaries filed a petition in the Circuit Court for Anne Arundel County seeking, among other things, an accounting and the appointment of a co-trustee. *Id.*

[16] The beneficiaries were the widow and son of the late Dr. Ralph Nelson. *In re Franke*, 207 Md. App. 679, 681 (2012).

Raymon retained Franke to represent him in those proceedings and paid him a cumulative total of at least $34,437,39, using proceeds from the trust. *Id.* Subsequently, the beneficiaries filed an amended petition, seeking Raymon's immediate removal as trustee and a "demand for damages of $1,500,000 for fraudulent misappropriation and intentional dissipation of Trust funds." *Id.*

Ultimately, the circuit court removed Raymon as trustee, appointed an interim trustee, and scheduled a trial on the beneficiaries' claims "relating to Raymon's purported misappropriation of trust assets." *Id.* By that time, Raymon was more than $120,000 in arrears on his debt to Franke. *Id.* at 684. Franke, nonetheless, had continued to represent Raymon, despite his nonpayment, "'because of the potential prejudice' that might have occurred 'with discovery still outstanding and with a hearing set for a'" pending motion by the beneficiaries seeking a preliminary injunction against Raymon. *Id.* at 684.

Finally, two months prior to trial, Franke notified Raymon that he would file a motion to withdraw as counsel, primarily[17] because Raymon had failed to pay Franke the fees owed and because, Franke believed, there was no reasonable prospect of being paid either those fees or any future fees he would incur in the case.[18] *Id.* at 682, 684. Raymon opposed the motion, claiming that "he 'would likely sustain irreparable harm and an unfair

[17] In the ensuing motion to withdraw, Franke also suggested that there were "'other reasons for the withdrawal' and that those reasons had 'created a conflict making continued representation problematic.'" *Franke*, 207 Md. App. at 684.

[18] By that time, the circuit court had removed Raymon as trustee, thereby cutting off his primary source of funds with which to pay his legal fees.

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trial if Counsel were to withdraw.'"[19] *Id.* at 684. The circuit court ultimately denied Franke's motion to withdraw, "without elaboration."[20] Franke noted an interlocutory appeal. *Id.* at 685.

We observed that it was undisputed that Raymon owed Franke for the legal services provided and that his failure to pay was a "fail[ure] substantially to fulfill an obligation" owed to Franke. *Id.* at 691 (quoting MLRPC 1.16(b)(5)). We also noted that Franke had provided Raymon "reasonable warning" of his intent to withdraw, as required under MLRPC 1.16(b)(5) and Rule 2-132(b). *Id.* Then, turning to MLRPC 1.16(b)(6), which permits a lawyer to "withdraw from representing a client if . . . the representation will result in an unreasonable financial burden on the lawyer," we determined that Raymon's arrearage of more than $120,000 in outstanding legal fees,[21] the likelihood that Franke would incur additional "expenditures of time and resources on Raymon's behalf" in

[19] Raymon averred that any purported conflicts between himself and Franke were "financially based." *Franke*, 207 Md. App. at 684.

[20] The underlying case had been specially assigned, but, "for some unknown reason," Franke's motion to withdraw was presented to a different judge, who granted the motion but thereafter, upon realizing that the case had been assigned to another judge, "withdrew" his order granting the motion. Then, the judge to whom the case had been specially assigned summarily denied Franke's motion. *Franke*, 207 Md. App. at 684-85.

[21] Although we did not set forth a hard-and-fast rule, we thought it important to consider the arrearage in the context of the size of the law firm seeking to withdraw. Thus, a debt of $120,000 owed to Franke, a solo practitioner, was comparable, we concluded, to the debt of $470,000 owed to the four-lawyer firm in *Fidelity National Title Insurance Company of New York v. Intercounty National Title Insurance Company*, 310 F.3d 537, 541 (7th Cir. 2002), in which the United States Court of Appeals for the Seventh Circuit reversed a district court ruling denying the firm's motion to withdraw. *Franke*, 207 Md. App. at 692.

preparing for the upcoming trial, and the remote likelihood that Raymon would be able to satisfy his financial obligations to Franke, resulted in an "unreasonable financial burden" on Franke. *Id.* at 692.

Then, after confirming that Franke had complied with the notice requirements of Rule 2-132(b), *id.* at 693, we addressed the grounds upon which a circuit court may, nonetheless, deny an attorney's motion to withdraw: undue delay, prejudice, or injustice. As for "undue delay," we observed that "[n]o one" had argued below or on appeal that undue delay would have resulted if Franke were permitted to withdraw, nor did the circumstances suggest that any such delay was a likely consequence of the grant of Franke's motion. *Id.* at 694. We further emphasized that Raymon had adequate time to find other counsel or prepare for self-representation and that, in any event, "a client who did not act to secure substitute counsel following notification of an attorney's intent to withdraw is not entitled to a continuance." *Id.* (citation and quotation omitted).

As for "prejudice,"[22] we observed that it was "inconceivable" that Raymon "did not understand that a likely consequence of his failure to pay any legal fees incurred, after his removal as trustee, would ultimately be an attempt by his counsel to withdraw from the case." *Id.* Moreover, we noted that, when Franke gave notice of his intent to withdraw, "Raymon had two months in which to obtain new counsel." *Id.* And furthermore, in case

[22] We note that Rule 2-132(b) uses the term "prejudice," whereas Franke used the term "unfair prejudice." *Franke*, 207 Md. App. at 694. In our view, "prejudice," in the context of Rule 2-132(b), implicitly means "unfair prejudice," because otherwise, counsel would never be permitted to withdraw under the rule, since a client always incurs some "prejudice" if his attorney is permitted to withdraw.

"new counsel was not a feasible option," Franke had taken care to place Raymon in as good a position as possible to represent himself, by continuing his representation through critical junctures in the case, such as discovery and the hearing on the motion for preliminary injunction, by overseeing "the turnover of trustee responsibilities to the interim trustee" and by attempting "to settle the matter." *Id.* at 694-95 (quotation omitted). "It was only after fulfilling those responsibilities that Franke finally informed Raymon of his intent to withdraw, timing his motion to withdraw to coincide with a lull in the case." *Id.* at 695. Given that Franke had "gone to some lengths to avoid compromising Raymon's interests" and that any prejudice which Raymon might have suffered as a consequence of granting the motion to withdraw was "plainly self-inflicted," we concluded that "Raymon would not have suffered unfair prejudice if Franke's motion to withdraw had been granted."[23] *Id.* at 694-95.

Finally, we turned to the final factor, "injustice," which we defined as "the nature and extent to which parties to the litigation, any third parties, or the attorney seeking to withdraw would suffer injustice as a result, if the court granted or denied the motion." *Id.* at 695. In that regard, we observed that "'an order compelling a lawyer to work without prospect of compensation . . . has a potential to cause significant hardship' to the attorney." *Id.* at 696 (quoting *Fidelity Nat'l Title Ins. Co. of N.Y. v. Intercounty Nat'l Title Ins. Co.*, 310 F.3d 537, 539 (7th Cir. 2002)). We rejected Raymon's claim that he would have suffered irreparable harm if Franke had withdrawn, reasoning that he himself "must bear

[23] In passing, we further noted that there was no evidence that any third parties would have suffered unfair prejudice. *Franke*, 207 Md. App. at 695.

the consequences of his failure to pay existing attorney fees and his acknowledged inability to pay those likely to be incurred by the trial[.]" *Id.*

After considering all the factors, we concluded that the circuit court had abused its discretion in denying Franke's motion to withdraw. *Id.* at 697. The effect of that denial was, we noted, "to compel Franke to provide free legal services to Raymon." *Id.*

In our view, *Franke* controls the outcome of this appeal. As in *Franke*, Cooper & Tuerk complied with Rule 2-132(b) by sending Rosario notice of its intent to withdraw more than five days prior to filing the motion. Furthermore, there was ample evidence that Rosario, by tendering payment of a mere $500 toward a six-months-overdue $28,000 legal bill,[24] had "fail[ed] substantially to fulfill an obligation to" Cooper & Tuerk "regarding [its] services."[25] MLRPC 1.16(b)(5). Moreover, as in *Franke*, Cooper & Tuerk, by giving Rosario notice of its intent to withdraw more than two months before the scheduled

[24] Indeed, Rosario conceded, at the June 13th hearing, that he had not paid the firm the money it claimed it was owed, approximately $32,000 as of that date, although he asserted that "that wasn't the agreement." Rosario suggested that he had a contingency fee arrangement with Cooper & Tuerk, but the legal services contract he executed in this case unambiguously provided for billing by hourly rates, with "payment of any outstanding balance within fifteen (15) days of the date of any billing statement on which there is such a balance."

[25] We acknowledge one important difference between the instant case and *Franke*, although we are convinced that that difference is not dispositive. Here, Rosario has an unpaid and overdue arrearage of approximately $32,000, owed to a three-attorney firm, which is relatively less than the $120,000 owed to Franke, a solo practitioner, but it is nonetheless a substantial amount of money. Furthermore, as in *Franke*, there is little prospect of payment. Indeed, the only realistic chance that Cooper & Tuerk would ever be paid is if Rosario prevailed in his action against Baik, but that is far from a certainty, and that is also a possibility that would, at best, be delayed by months or even years.

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commencement of trial, provided him "reasonable warning that [it would] withdraw unless the obligation is fulfilled[,]" MLRPC 1.16(b)(5), with sufficient time for Rosario to obtain new counsel or prepare for self-representation.[26]

It is true that, several days after Cooper & Tuerk moved to withdraw its representation, Baik filed a motion for summary judgment. The circuit court may have considered this when denying the initial motion, notwithstanding that its order made no mention of this rationale. As soon as Cooper & Tuerk became aware of that motion, however, it took steps to continue its representation of Rosario in opposing Baik's motion. In this important respect, the instant case is also like *Franke*. 207 Md. App. at 694-95.

Given Cooper & Tuerk's prompt efforts to prevent any unfair prejudice to Rosario, after the filing of Baik's motion for summary judgment, we see no reason for the court to have denied the firm's motion for reconsideration.[27] We disagree with the circuit court that Cooper & Tuerk had ample opportunity to withdraw its representation prior to when it finally attempted to do so. There is ample evidence in the record that the firm had

[26] The circuit court focused on whether the motion to withdraw was "ripe." The critical factor, in our view, is that Rosario was given adequate notice, not whether he was certain that the circuit court would subsequently grant Cooper & Tuerk's motion to withdraw.

[27] We have not even addressed in our analysis that Rosario had filed a complaint against Cooper & Tuerk with the Attorney Grievance Commission. It takes little imagination to think that the Attorney Grievance matter might create a conflict between Copper & Tuerk and its client. The circuit court minimized the importance of the grievance, believing that it was based entirely on Cooper & Tuerk's attempt to withdraw and that any conflict would be mooted by the court's denial of its motion to do so, and we do not further address it here.

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attempted to work out a payment plan with Rosario.[28] It would be an injustice if Cooper & Tuerk were, in effect, penalized for attempting to accommodate its client instead of withdrawing its representation at the earliest possible opportunity.

Even if the circuit court reasonably could have denied Cooper & Tuerk's initial motion to withdraw in light of Baik's motion for summary judgment (which, we note, was filed after Cooper & Tuerk had filed its initial motion), we hold that the court abused its discretion in denying Cooper & Tuerk's motion for reconsideration. We do not perceive any "undue delay, prejudice, or injustice" to Rosario, the court, or third parties. Md. Rule 2-132(b). The denial of Cooper & Tuerk's motion to withdraw essentially forced the three-attorney firm to provide Rosario free legal services, with no promise of remuneration, which is an unfair financial burden on the firm. *See Alexian Bros. Med. Ctr. v. Sebelius*, 63 F. Supp. 3d 105, 108-09 (D.D.C. 2014) (observing that "[i]t simply expects too much of counsel to expend the additional energy necessary to go to trial and to front the necessary expenses, without any real assurance that he will be paid for any of it . . . Under these circumstances, [a]n order requiring an attorney to continue representing a client in a civil action without compensation may subject the attorney to irreparable harm and amounts to an order of specific performance" (citations and quotations omitted) (modifications in

[28] Indeed, correspondence between the firm and Ms. Javier reflects the firm's attempt to resolve the billing issues. For example, in an August 14, 2015 e-mail, Tuerk stated that he could accept "regular partial payments but the fees are due when the bill is sent and not at the end of the case. Otherwise I am lending money for the duration of the case and I am not a bank."

original)). Accordingly, we hold that the circuit court abused its discretion by denying Cooper & Tuerk's motion to withdraw.

ORDER OF THE CIRCUIT COURT FOR BALTIMORE CITY VACATED. CASE REMANDED TO THAT COURT FOR ENTRY OF AN ORDER GRANTING THE MOTION TO WITHDRAW. COSTS TO BE PAID BY APPELLEE.