

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE: STRYKER REJUVENATE AND
ABG II HIP IMPLANT PRODUCTS
LIABILITY LITIGATION

MDL NO. 13-2441 (DWF/BRT)

PRETRIAL ORDER NO. 44

This Document Relates to ALL
ACTIONS

**ORDER REGARDING PENDING
AND FUTURE REQUESTS TO
WITHDRAW AS COUNSEL IN THIS
MDL**

The Court is aware of various requests to withdraw as counsel in certain matters pending in this Multidistrict Litigation (MDL), and provides the following guidance for current counsel who have made those pending requests, as well as to counsel for future such requests in this MDL:

IT IS HEREBY ORDERED that:

1. Specific Obligation for Withdrawal Motion *in Deceased Plaintiff Matters*:

In those matters in which the individual who was implanted with the Affected Product has died since bringing the action, counsel seeking to withdraw must take certain actions (set forth in paragraphs 1(a) and 2 hereof) before the request will be considered.

a. Suggestion of Death and Dismissal for Failure to Respond: While all counsel in this MDL are expected to comply with all applicable rules, the Court specifically notes that counsel seeking to withdraw as counsel in a deceased plaintiff matter must file a suggestion of death pursuant to Fed. R. Civ. P. 25(a)(1) within thirty (30) days of this Order, or within thirty (30) days of learning of the death (whichever is later). Counsel shall promptly thereafter file a motion for

substitution of parties or the decedent's action will be dismissed as required by Fed. R. Civ. P. 25(a)(1). If counsel is unable to promptly file a substitution of parties because of the failure of the estate or decedent's representative to respond to counsel with necessary information, then counsel must file a letter in both the main case and the individual case advising the Court of the circumstances of the failure to respond. The Court will then issue an Order directing the estate or decedent's representative to respond to counsel and the Court (with such notice being served by current counsel), and, if no response is provided within 14 days of such notice, then the Court will dismiss the matter without prejudice.

2. General Obligation for Withdrawal Motion in *All Unrevised Plaintiff*

Matters: In all matters involving an Unrevised Plaintiff (or an unrevised decedent's estate or representative), counsel seeking to withdraw must take certain actions before the request will be considered. The September 12, 2019 Order Regarding Unrevised Plaintiffs (Doc. No. 1394) established certain mandatory tolling election response obligations on the part of Unrevised Plaintiffs in this Multidistrict Litigation. The response deadline was October 28, 2019 for existing matters and thirty (30) days from filing or transfer for all future Unrevised Plaintiff filings. It is the Court's expectation that counsel will have provided notice of the tolling election response obligation and will have expressly advised the Unrevised Plaintiff (or an unrevised decedent's estate or representative) of the dismissal of the Complaint for failure to respond. Accordingly, counsel seeking to withdraw from representation of an Unrevised Plaintiff (or an unrevised decedent's estate or representative) must file a letter with this Court indicating

if a completed election form has been submitted, and, if no such form has been provided, then counsel must advise the Court and lead counsel (Kim M. Catullo for Defendant and Peter J. Flowers for Plaintiffs) of the circumstances regarding the failure to do so. If the Unrevised Plaintiff (or an unrevised decedent's estate or representative) has failed to respond following notice by counsel or following good faith efforts by counsel to reach the Unrevised Plaintiff (or an unrevised decedent's estate or representative), then the Court will issue an Order directing the estate or decedent's representative to respond to counsel and the Court (with such notice being served by current counsel), and, if no response is provided within fourteen (14) days, then the Court will dismiss the matter without prejudice.

3. General Obligation for Withdrawal Motion in *All Revised Plaintiff*

Matters: In all matters involving a Revised Plaintiff, counsel seeking to withdraw must provide the Revised Plaintiff (or the Revised Plaintiff's estate or representative) with written notice confirming that the withdrawal of counsel has been requested and that the Court will expect the Revised Plaintiff or representative to identify new counsel or enter an appearance indicating his or her intent to proceed with the matter as a *pro se* litigant within thirty (30) days of the granting of the motion to withdraw, if applicable. A written acknowledgement by the Revised Plaintiff or representative of such notice must be provided by requesting counsel before the motion for withdrawal will be decided.

4. Failure to Comply with the Requirements of this Order: No motion for withdrawal of counsel shall be considered unless compliance with this Order has been made.

Dated: January 15, 2020

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge