

Jonathan (Jon) Zeisser

JUL 30 2021

From: marty@pruhs-donovan.com
 Sent: Friday, July 30, 2021 1:08 PM
 To: Jonathan (Jon) Zeisser
 Subject: [E] Response to grievance filed by Todd Dyer
 Attachments: We sent you safe versions of your files; Letter of January 19th 2017.pdf

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Dear Mr. Zeisser,

I am responding to the grievance filed by Todd Dyer dated June 29th, 2021.

On November 10th, 2016 Magistrate Judge David Jones authorized appointment of standby counsel for Mr. Dyer in Eastern District of Wisconsin Case Number 15-CR-115. This was one of three criminal cases pending against Mr. Dyer at that time in the Eastern District of Wisconsin. (He also had one prior fraud conviction in Eastern District of Wisconsin Case 98-CR-176.) Mr. Dyer was representing himself on all three cases. This particular case was scheduled for a jury trial to begin on December 5th. It was a complex case involving a complicated business fraud allegedly committed by Mr. Dyer. There had been multiple complex pleadings filed in the case; it had extremely voluminous discovery; and there were numerous potential trial witnesses and exhibits. My law partner Chris Donovan and I were contacted by Federal Defender Services for the Eastern District of Wisconsin and we agreed to co-serve as standby counsel for Mr. Dyer.

To get a basic understanding of the case, Attorney Donovan and I met and had phone calls with Mr. Dyer to discuss the factual background of the allegations and the legal and procedural history of the case. We generally reviewed the docket entries including the indictment and other pleadings and filings, and discussed matters such as rules of evidence and procedure, how to subpoena witnesses, identify exhibits, and other considerations to assist Mr. Dyer to be ready for trial.

We did not discuss or review any of the legal aspects of Mr. Dyer's case in any detail, nor did I do any research or analysis of any of his motions or defenses because of the limited role I was serving as standby counsel. I do not have any recollection of Mr. Dyer telling us anything about an alleged defect in the indictment.

Attorney Donovan made a schedule as to which one of us would be with Mr. Dyer on each day of the trial, and we provided a copy of the schedule to the Court. We did not perform the usual duties of lead counsel such as performing legal research, evaluating or preparing legal arguments or reviewing discovery because of the looming trial deadline, the sheer volume of discovery, the complexity of the case, and our limited role as standby counsel.

Mr. Donovan attended the first day of trial on December 5th, and I attended the second day, on December 6th. After court on December 6th, Mr. Dyer asked me to express to the government that he was interested in resolving the case with a plea. I told Assistant U.S. Attorneys Benjamin Proctor and Joseph Wall, and that evening during a series of phone calls with Mr. Dyer, Mr. Proctor and Mr. Wall I served as a go-between as they negotiated a global plea agreement as to all three of Mr. Dyer's cases. I did not participate in the negotiations other than to be a conduit for information between Mr. Dyer and the attorneys for the government, nor did I advise him to offer, accept or reject any terms. Mr. Dyer was completely in control of all aspects of his case, including those plea negotiations.

The next morning, December 7th, was my day to go to trial with Mr. Dyer again. Before the case was called Judge Stadtmueller permitted Mr. Dyer and the government attorneys to continue their plea negotiations. I sat with Mr. Dyer as he negotiated the plea agreement with Mr. Proctor and Mr. Wall. I reviewed the agreement with Mr. Dyer as they negotiated it and it was my impression from observing Mr. Dyer's extensive back and forth with the government that he was entering into the agreement voluntarily and knowingly. I did not advise him to enter into a plea agreement or to accept, offer or reject any terms.

That same day a change of plea hearing was held by Magistrate Judge Jones and I appeared next to Mr. Dyer as standby counsel while Judge Jones went through the plea colloquy with him.

The next day, Mr. Dyer called me and indicated he was thinking about withdrawing his guilty plea. In response, I called my law partner Attorney Donovan, who emailed Mr. Dyer a copy of Rule 11 which lays out the standards for withdrawing guilty pleas. Mr. Dyer never told me he had decided or intended to withdraw his guilty plea, and I never advised him regarding his decision.

I am attaching a letter Mr. Donovan and I sent to Judge Stadtmueller after our appointment ended because it contains a good, somewhat contemporaneous chronology of the work we did as standby counsel for Mr. Dyer. (See letter dated January 19th, 2017)

Please do not hesitate to contact me if I can provide anything further.

Sincerely,

Martin J. Pruhs - Attorney
Pruhs & Donovan, S.C.
757 North Broadway - 4th Floor
Milwaukee, Wisconsin 53202

tel: (414) 221-1950

www.pruhs-donovan.com

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