

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

**FEDERAL ENERGY REGULATORY  
COMMISSION,**

**Plaintiff,**

v.

**Civil Action No. 3:15cv452**

**POWHATAN ENERGY FUND, LLC, et al.,**

**Defendants.**

**MEMORANDUM ORDER**

This matter comes before the Court on Defense’s Unopposed Motion on Behalf of Powhatan Energy Fund, LLC for Leave to File Surreply (the “Motion”). (ECF No. 229.) A representative of Defendant Powhatan Energy Fund, LLC (“Powhatan”) has requested that current counsel Williams Mullen (“the Firm”) seek leave of Court so Powhatan can file a surreply to the Firm’s own motion to withdraw as counsel. Although the Firm presents the motion, it does not advocate for or against the filing of Powhatan’s surreply. For the reasons that follow, the Court denies the Motion.

**I. Factual and Procedural Background**

On July 26, 2021, Williams Mullen filed a motion to withdraw as counsel for Powhatan. (ECF No. 207.) In its Memorandum in Support of Motion of Counsel for Leave to Withdraw, the Firm cited as its reasons for withdrawal Powhatan’s lack of adequate financial assurance and “substantial” and “irreconcilable” differences between the Firm and Powhatan regarding how to conduct the remaining stages of litigation. (ECF No. 208.) In response, Powhatan’s principals filed a Notice of Objection to the Motion to Withdraw, arguing that (1) allowing the Firm to withdraw would “pose a material adverse impact on Powhatan;” (2) it has approximately

\$400,000 in cash left which could be used for legal expenses; and, (3) the Firm's gross revenue and profit show that the Firm would not face an "unreasonable financial burden" if Powhatan failed to pay the Firm for its legal services. (Notice of Obj. to Mot. Withdraw 2-4, ECF No. 213.) Powhatan denied that differences exist between it and counsel. (*Id.* 5.)

On August 30, 2021, this Court ordered the Firm and Powhatan to submit full financials, attested to and under seal if necessary. (ECF No. 223.) The Parties did so on September 3, 2021. The matter is scheduled for a status conference on Monday, September 13, 2021 at 11:00 AM.

## II. Analysis

In support of the Motion, Powhatan submitted "comments" on "seven specific statements" made in Williams Mullen's filings that would constitute its surreply. (ECF No. 229 Ex. 1.) The first comments on whether the Firm can provide zealous representation; the second responds to the Firm's observation of Powhatan's "cynicism;" the third reflects on the public importance of the underlying litigation; the fourth asserts that no other attorneys will to represent Powhatan; the fifth reiterates that the objective of Powhatan's litigation strategy is to conserve money; the sixth contests the Firm's claim of irreconcilable differences; and the seventh comments on Powhatan's good faith efforts to timely pay the Firm's invoices, including through the pandemic.

Eastern District of Virginia Local Civil Rule 7 prohibits a party from filing a surreply without first obtaining leave of Court. E.D. Va. Loc. Civ. R. 7(F)(1) ("No further briefs . . . may be filed without first obtaining leave of Court."). A court has the discretion to grant a responding party leave to file a surreply when the moving party has raised new arguments or brought forth

new material in its reply brief. *Dillard v. Kolongo*, No. 1:16cv1060, 2017 WL 2312988, at \*6 (E.D. Va. May 25, 2017).

The Court notes that surreplies “are highly disfavored, as they usually are a strategic effort by the nonmoving party to have the last word on the matter.” *Lismont v. Alexander Binzel Corp.*, No. 2:12cv592, 2014 WL 12527239, at \*3 (E.D. Va. May 23, 2014) (internal quotations omitted) (quoting *Liberty Legal Found. v. Nat’l Democratic Party of the USA, Inc.*, 875 F. Supp. 2d 791, 797 (W.D. Tenn. 2012)). Generally, the Court would disregard those new arguments raised for the first time in a reply brief and deny the request for a surreply.

Powhatan does not argue that Williams Mullen raised new arguments or brought forth new material in its reply brief, nor that another legal standard would permit a surreply in this case. This is not surprising, as “[the] Surreply was prepared without the assistance of Virginia counsel.” Powhatan seeks only to dispute specific quotes from Williams Mullen’s reply.

This is not proper. Companies cannot represent themselves before the Court because it would constitute the unauthorized practice of law. *Rowland v. Cal. Men’s Colony*, 506 U.S. 194, 201–02 (1993) (citing *Osborn v. President, Directors & Co. of Bank*, 22 U.S. 738, 830–31 (1824)). Principals cannot file papers on behalf of their corporations. *See, e.g., Scurtu v. Hosp. & Catering Mgmt. Servs.*, No. 07-0410-WS-B, 2012 WL 13048825, at \*1 (S.D. Ala. June 19, 2012). If Powhatan wishes to testify in this matter, they may only do so as a witness, under oath, in Court. While a representative of Powhatan provided Williams Mullen the so-called surreply and Williams Mullen placed it on the docket, the document does not come to the Court in a procedurally recognizable manner. The Notice of Objection to the Motion of Counsel for Leave to Withdraw (ECF No. 213) was also “provided to the undersigned by a representative of Defendant Powhatan” and is likely improper as well. Powhatan cannot “submit this Surreply in

response,” (ECF No. 229 Ex. 1), because doing so would constitute the unauthorized practice of law.


In the interest of judicial efficiency, and because Powhatan may not represent itself by making factual or legal arguments in this manner, the Court will deny the Motion. The Court will also strike the August 5, 2021 Notice of Objection (ECF No. 213) and Exhibit 1 of that Motion for the same reason. Powhatan cannot argue its position to this Court absent qualified counsel to act on its behalf.

### **III. Conclusion**

For the foregoing reasons, the Court DENIES the Motion for Leave to File Surreply. (ECF No. 229.) The Court STRIKES Exhibit 1 of the Motion (ECF No. 229 Ex. 1) and the August 5, 2021 Notice of Objection (ECF No. 213).

It is SO ORDERED.

Date: 09/10/2021  
Richmond, Virginia

  
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s/  
M. Hannah Lauck  
United States District Judge