

IP 06-0499-C H/L Burns v GM [2]
Judge David F. Hamilton

Signed on 11/30/07

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IAGO BURNS,)	
)	
Plaintiff,)	
vs.)	NO. 1:06-cv-00499-DFH-WTL
)	
GENERAL MOTORS,)	
)	
Defendant.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IAGO BURNS,)
)
 Plaintiff,)
)
 v.) CASE NO. 1:06-cv-0499-DFH-WTL
)
 GENERAL MOTORS CORPORATION,)
)
 Defendant.)

ENTRY ON ATTORNEY'S MOTION TO WITHDRAW

This employment discrimination case has survived a motion for summary judgment and is set for trial on January 7, 2008. After an unsuccessful settlement conference, during which plaintiff rejected the advice of his attorney, plaintiff's attorney filed a motion to withdraw. The motion does not comply strictly with Local Rule 83.7(b), which requires evidence of written notice to the client at least five days in advance of the proposed withdrawal date. Eleven days have passed since plaintiff's counsel filed the motion and sent the letter, so the court will overlook the error in timing.

The motion to withdraw describes a meeting and telephone call in which the attorney-client relationship ran aground as plaintiff and his lawyer disagreed about how to pursue the case. Plaintiff's attorney states that he is convinced the relationship is broken and that he can no longer effectively represent plaintiff.

In the absence of an affirmative showing that the client consents to the attorney's withdrawal, the court presumes the client objects, in which case the attorney must show a valid and compelling reason for allowing withdrawal despite the presumed objection. See *Stafford v. Mesnik*, 63 F.3d 1445, 1448 (7th Cir. 1995); *Woodall v. Drake Hotel, Inc.*, 913 F.2d 447, 449 (7th Cir. 1990).

Pursuant to order of this court, the conduct of counsel in this court is governed by the Rules of Professional Conduct adopted by the Supreme Court of Indiana. Rule 1.16 of the Rules of Professional Conduct governs termination of representation. Rule 1.16(b)(4) authorizes withdrawal if "a client insists upon taking action . . . with which the lawyer has a fundamental disagreement," which may be the closest fit between this situation and the rule. However, this is not the first case in which a client with a perhaps weak case (though one that has survived summary judgment) has rejected a settlement his attorney thinks he should accept. It is not clear how much deeper the rift might be in this case. Also relevant here is the provision in Rule 1.16(c): "When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation."

When an attorney seeks to withdraw from a case and no substitute counsel have appeared, the court must consider the interests not only of the counsel but also the client, the other parties, and the court. See *Hammond v. T.J. Litle & Co.*,

Inc., 809 F. Supp. 156, 159 (D. Mass. 1992) (“An attorney who agrees to represent a client in a court proceeding assumes a responsibility to the court as well as to the client.”); *Gibbs v. Lappies*, 828 F. Supp. 6, 7 (D.N.H. 1993); *Haines v. Liggett Group, Inc.*, 814 F. Supp. 414, 423 (D. N.J. 1993). As Judge Keeton explained in *Hammond*:

The relationship between attorneys and their clients is contractual. Nevertheless, the terms and effect of a severance of the relationship do not depend solely on findings of breach, or who broke the contract first, or whose breach was more substantial. An attorney who agrees to represent a client in a court proceeding assumes a responsibility to the court as well as to the client. Both attorney and client agree to a relationship between them that bears also upon their respective obligations to the court.

809 F. Supp. at 159. The court has a responsibility to mitigate the effects on other parties and the court of any breakdown in what might otherwise be a private relationship between plaintiff and his attorney.

Because of the challenges that a *pro se* party can pose for both the court and the opposing party, the court does not routinely grant motions to withdraw. Too often, a plaintiff’s attorney will seek to withdraw from a weak case, leaving the case like an orphan on the court’s and the opponent’s doorstep. The court and the opponent are thus left the task of educating the *pro se* party about applicable law and procedure, and often about the weaknesses in his case. Typically, such education should be the responsibility of that party’s original lawyer. In this case, moreover, the case is set for trial in less than six weeks. Rule 1.16(d) of the Rules of Professional Conduct requires withdrawing counsel to protect the client’s

interest by “allowing time for employment of other counsel.” This would not be possible here. Granting the motion to withdraw would delay the trial and inevitably impose substantial costs on defendant.

Accordingly, plaintiff’s attorney’s motion to withdraw is denied. The case remains set for trial on January 7, 2008, with a final pretrial conference on December 21, 2007, at 9:30 a.m.

So ordered.

Date: November 30, 2007

DAVID F. HAMILTON, JUDGE
United States District Court
Southern District of Indiana

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