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R.I. Supreme Court Rules that a Law Firm Must be Allowed to Withdraw from Representing Client with Unpaid Legal Bills Despite Looming Trial Date

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The Rhode Island Supreme Court reversed a trial court decision that had denied a Motion to Withdraw filed by counsel whose client had a substantial unpaid bill, in an opinion that should be welcomed by all lawyers who prefer not to be forced to work for free (as compared to voluntary pro bono work). See *King v. NAIAD Inflatables of Newport, Inc.*, R.I., No. 2009-Appeal (Dec. 14, 2010). The trial court based its decision in large measure on the fact that there was an imminent trial date and it would be difficult for the client to find new counsel without a postponement of the trial date. The supreme court rejected that reasoning.

Factual Background

The underlying case in which the motion was filed dealt with a claim against a company by an independent contractor for sales

commissions. The law firm representing the defendant company had been paid on a timely basis for the initial two years that it had been representing the company in the matter but during the last year of the representation, including the year in which a trial was set, the client had been woefully delinquent in paying its bills. The law firm for the delinquent client had a fee agreement in place that provided that bills were payable upon receipt and that the law firm reserved the right to withdraw if bills were not promptly paid. After a lengthy period of dunning proved unproductive, and the law firm faced the prospect of a trial of two weeks in duration, which would naturally make the amount unpaid even larger, a Motion to Withdraw as counsel was filed. Ample notice of the motion was given to the client. The trial court emphasized in its denial of the motion that it would be difficult to maintain the trial date if the motion were granted. Neither opposing counsel nor the delinquent client, however, opposed the Motion to Withdraw.

Reasoning of the Supreme Court

Although the supreme court acknowledged the understandable concern that the trial court had for maintaining its trial calendar, the reversal focused on Rule of Professional Conduct 1.16, which allows for the withdrawal of counsel when the financial obligations of a client are not being fulfilled. The court also relied on the terms of the fee agreement, which provided for withdrawal when, as in this case, the client was not paying its fees when due. It was also important to the supreme court that neither the opposing counsel nor the client opposed the Motion to Withdraw, and that the client had been given fair notice prior to the motion being filed. Perhaps of greater importance to the reasoning of the Rhode Island Supreme Court was that the law firm should not be subjected to undue financial hardship. In addition to the substantial

unpaid bills at the time the motion was filed, the law firm was being faced with the unhappy prospect of not being paid for the scheduled two-week trial.

The supreme court reasoned that lawyers are entitled to be paid for their services, similar to other occupations, and should not be forced to work for free. This decision should be music to the ears of lawyers who seek to have removed from their shoulders the yoke of clients who do not pay their bills. It is comforting that the Supreme Court of Rhode Island recognized the unfairness of refusing to remove that burden notwithstanding an imminent trial date. *See generally, Parfi Holding AB v. Mirror Image Internet, Inc.*, 926 A.2d 1071 (Del. 2007) (explaining that a court could not require an attorney to submit a “non-withdrawable entry of appearance,” noting the Rule of Professional Conduct that requires an attorney to withdraw in certain circumstances.)

The Model Rules of Professional Conduct were changed in 2002 so that Rule 1.16(b) was renumbered to highlight the point that a lawyer may withdraw for any reason as long as it does not cause a material adverse effect on the interest of the client. The Model Rules follow the traditional view allowing withdrawal if the client fails to fulfill an “obligation” regarding the representation, such as a refusal to make or secure the payment of attorneys’ fees and expenses. *See ABA/BNA Lawyers’ Manual of Professional Conduct*, Section 31:1108 (January 2010). *See also* G. Hazard and W. Hodes, *The Law of Lawyering*, § 20.9 (3d ed. 2001 & Supp. 2005-2) (Rule 1.16 allows lawyer to withdraw after giving reasonable warning and perhaps providing a reasonable grace period).

This short overview of a relatively short decision should be a basis for optimism to the extent that some courts still are sensitive to the practical realities of practicing law. This sensitivity is consistent with maintaining high professional standards.

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