

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS
JUL 15 2004

JAMES W. McCORMACK, CLERK
By: _____ DEP. CLERK

MICHAEL GALSTER

PLAINTIFF

V.

NO. 4:03-CV-01013 ^{GTE} ~~3000~~

KELLY DUDA

DEFENDANT/COUNTERCLAIMANT

AMENDED
MOTION FOR LEAVE TO
WITHDRAW AS COUNSEL

COMES NOW THE UNDERSIGNED, David O. Bowden and Steven R. Smith, and as cause for this motion, states:

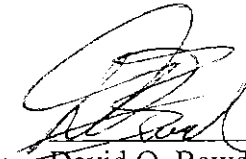
1. That they are counsel of record in the above-styled case.
2. That during the course of their representation conflicts with Defendant/Counterclaimant have arisen to the point that they can no longer represent Mr. Duda consistent with the provisions of Rule 1.7 of the Model Rules of Professional Conduct.
3. That Mr. Duda has requested his files and his retainer be returned. See Exhibit A.
4. That Mr. Duda appears to have obtained other counsel for this matter. See Exhibit B, letter of Phillip Lyon to John W. Walker.
5. That the previous motion inadvertently did not include Exhibit A, which is attached herewith.
6. That there is an extreme conflict of interest here between the attorneys own personal

interests and that of the client that has arisen as a result of the correspondence embodied in Exhibits A and B. Ethically, the undersigned must withdraw.

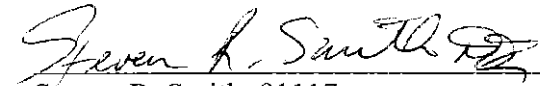
7. That no party will be prejudiced by this withdrawal.

WHEREFORE, the undersigned ask the Court for leave to withdraw as counsel of record in this case and for all other appropriate relief.

Respectfully submitted,



David O. Bowden, 89119
BOWDEN LAW FIRM, P.A.
P.O. Box 193101
Little Rock, AR. 72219
(501) 374-3758



Steven R. Smith, 91117
MURPHY'S LAW, INC.
16719 Cantrell Rd.
Little Rock, AR. 72223
(501) 907-9000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon the individual(s) indicated herein below by placing a copy of same in the United States Mail, postage prepaid, or by such other service as may be indicated herein.

Dated this 15th day of July, 2004

Joseph W. Woodson, Jr., 400 W. Capitol Ave, Suite 2990, Little Rock, AR. 72201
Kelly Duda c/o Phillip Lyons, JACK, LYON & JONES




Exhibit A

July 8, 2004

VIA FAX 501-374-4187

David O. Bowden
John W. Walker Law Firm
1723 S. Broadway
Little Rock, AR 72206

VIA FAX 501-907-5160

Steve Smith
Murphy's Law
16719 Cantrell Road
Little Rock, AR 72223

Dear David and Steve:

This letter is to inform you that I am seeking new counsel to represent me in my pending case of *Michael Galster vs. Kelly Duda*, Docket No. 4:03CV01013 GTE, Eastern District of Arkansas effective immediately.

Please advise me as to who your professional liability carrier is, including their name, address and web site, etc. I will appreciate your immediate response. This is an extremely serious matter and I am rapidly running out of time. I have paid you about \$4,500 and would ask you immediately refund this to me.

Sincerely,


Kelly Duda

cc: Philip Lyon, Esq.

Exhibit B

JACK, LYON, & JONES, P.A.

ATTORNEYS AT LAW
#11 MUSIC CIRCLE SOUTH
SUITE 202
NASHVILLE, TENNESSEE 37203
(615) 259-4664
Telecopier (615) 259-4668

Other Offices In:
Little Rock, Arkansas
Conway, Arkansas
Jasper, Arkansas

Philip K. Lyon
E-mail: pklyon@jlnash.com
E-Fax (425) 699-3425

July 9, 2004

VIA FACSIMILE (501) 374-4187 & U.S. MAIL

John W. Walker, Esq.
1723 S. Broadway
Little Rock, AR 72206

RE: Kelly Duda

Dear John:

I have agreed to help Kelly Duda with regard to a legal mess in which he has been placed by two attorneys, Steve Smith and David Bowden, who happens to be in your office. I don't know how long Mr. Bowden has been in your office, but it is my understanding, for several months. I sincerely believe that he has committed malpractice, and continues to do so. This malpractice started somewhere in December, 2003, and has continued up to and including yesterday, July 8. I enclose for your review a copy of a letter which Mr. Duda sent to Mr. Bowden yesterday, as well as a copy of Mr. Bowden's e-mail sent at approximately 12:07 p.m. on July 8. Based on Mr. Bowden's e-mail, in addition to pursuing a malpractice claim, Mr. Duda further intends to file an ethical complaint with the Disciplinary Committee of the Arkansas Supreme Court. It is my opinion that Mr. Bowden will be found guilty of ethical violations based on this e-mail alone, and maybe even disbarred.

There are two items on which I need your help. The first is to impart some of your vast wisdom to Mr. Bowden (since he possesses none of his own), and encourage him to return the \$4,500.00 to Mr. Duda. Next, I need to know the nature of your malpractice coverage and whether Mr. Bowden is included on that policy. I know that some of the malpractice will have been committed before he came to work for you while he worked for Charlotte Murphy, but the malpractice committed on July 8 certainly falls on your watch, if he is covered by your policy. Further, about all I know about malpractice insurance is that there are two types, the first being the date of the occurrence, and the second a claims made type policy. If yours is a claims made policy, then Mr. Bowden is more than likely possessed of coverage on your policy for the entire period of time.

After you have had a chance to review this letter, I would appreciate if you would your giving me a call to discuss this situation. I will be in the Little Rock office today, in the Nashville office tomorrow afternoon (Saturday) and in Indiana on Sunday through Tuesday morning where I can be reached on my cell phone at (615) 414-3125. Starting Tuesday afternoon I will be back in the Nashville office where the number is (615) 259-4664.

JACK LYON & JONES, P.A.

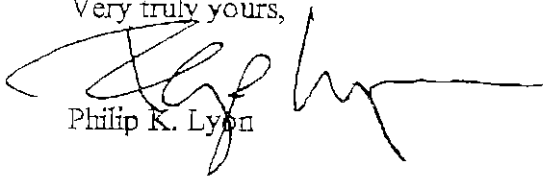
John W. Walker, Esq.

July 9, 2004

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By copy of this letter to Charlotte Murphy I am inquiring of Mr. Bowden's coverage under her malpractice insurance, which I understand is with CNA. Certainly many of Mr. Bowden's actions (or mis-actions) personally occurred during the time he was employed by Ms. Murphy.

Very truly yours,



Philip K. Lyon

PKL/rs

cc: Charlotte Murphy, Esq. via facsimile and U.S. Mail
Steve Smith, Esq. via facsimile and U.S. Mail
David Bowden, Esq. via facsimile and U.S. Mail
Kelly Duda via facsimile and U.S. Mail