

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOHN EAKIN,

*

Plaintiff,

*

v.

*

SA-12-CA-1002 FB (HJB)

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AMERICAN BATTLE MONUMENTS
COMMISSION, et al.

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*

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Defendants.

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PLAINTIFF'S COUNSEL'S MOTION TO WITHDRAW

Plaintiff's Counsel, as directed by Plaintiff, seeks to withdraw as counsel in this case.

I.

The Court appointed Jefferson Moore to assist Plaintiff, John Eakin, who had handled this case *pro se* prior to Counsel's appointment.

II.

Plaintiff has filed a *Pro Se* Plaintiff's Motion to Vacate Appointment of Pro Bono Counsel (Docket No. 67) alleging violations of the Texas Disciplinary Rules of Professional Conduct (TDRPC), specifically Rules 1.01, 1.02, and 1.03 (respectively Competent and Diligent Representation, Scope and Objectives of Representation, and Communication). The Plaintiff alleges other unethical behavior such as attempting to submit a false statement and have Plaintiff endorse an untrue statement. Plaintiff alleges that Counsel sought Plaintiff's signature as a condition for filing a document to withdraw on or about June 13, 2014. See Exhibit 1. Counsel denies any and all unethical allegations contained in the *Pro Se* Motion.

III.

A conflict of interest now exists between Counsel and the Plaintiff and Counsel is required to seek withdrawal from the case under TDRPC Rule 1.06(b)(2) which provides that a lawyer shall not represent a person if the representation becomes adverse to the lawyer's own interests.¹

IV.

In addition to the conflict of interest, Counsel believes that the Plaintiff's *pro se* Plaintiff's Motion to Vacate Appointment of Pro Bono Counsel is tantamount to discharging Counsel. The Texas Disciplinary Rules for Professional Conduct require that Counsel submit this Motion to Withdraw under Rule 1.15(a)(3): "A lawyer shall...withdraw...from representation of a client if: the lawyer is discharged, with or without good cause." Comment 4 to this Rule emphasizes that a client has the power to discharge a lawyer at any time, with or without cause and that Rule 1.15(a) requires the discharged lawyer to seek withdrawal. See Exhibit 2 which is a full copy of the TDRPC.

V.

Note, however, that TDRPC Rule 1.15(c) negates the client's discharge if the tribunal orders the lawyer to continue representation notwithstanding good cause for terminating representation.

VI.

The Court has set a status hearing for July 16, 2014, at 11:00 AM (See Docket No. 66). Counsel requests that the Court take up this Motion to Withdraw at that same hearing.

¹ TDRPC Rule 1.06(b)(2) reads "...a lawyer shall not represent a person if the representation of that person...reasonably appears to be or becomes adversely limited to the lawyer's... responsibilities to... the lawyer's... own interests."

Furthermore, Counsel requests that should it become necessary at the hearing of this motion and for any hearing on the *Pro Se* Plaintiff's Motion to Vacate Appointed Pro Bono Counsel that the Court note TDRPC Rule 1.05(c)(4). This Rule allows the Court to order Counsel to reveal "confidential information" that is either privileged or unprivileged information. In the alternative, Counsel requests that the Court order Counsel to reveal confidential information an in-chambers conference. Counsel believes that the Court will find that Counsel has diligently represented the Plaintiff and that no unethical behavior by Counsel has occurred.

VII.

Finally, Local Rule AT-3 provides that an attorney seeking to withdraw from a case must file a motion specifying the reasons for withdrawal and provide the name and office address of the successor attorney. If the successor attorney is not known, the motion must set forth the client's name, address, and telephone number, and must bear the client's signature.

VIII.

In accordance with Local Rule AT-3, Counsel provides the following:

Client: John Eakin
Address: 9865 Tower View, Helotes, Texas 78023
Telephone Number: 210-695-2204

Signature: _____

John Eakin, Plaintiff

WHEREFORE, considering the foregoing, Counsel prays that the Court act on the motion as it deems prudent.

Respectfully Submitted,

 S/
Jefferson Moore
8438 Fountain Circle
San Antonio, Texas 78229
SBN: 24030004
(210) 595-8338
FAX (210) 592-1793
Email: moorelegal@gmail.com

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Susan Strawn, Assistant United States Attorney
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
Sstrawn@usa.doj.gov

 /S/
Jefferson Moore

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ORDER ON PLAINTIFF'S COUNSEL'S MOTION TO WITHDRAW

The Court considers the foregoing Motion and:

1. _____ Finds that no unethical behavior by Counsel has occurred, but GRANTS the Withdrawal for the reasons stated in the Motion.

a. _____ The Plaintiff is now *pro se* in this matter.

OR

b. _____ The Court appoints _____ as successor attorney.

OR

2. _____ Sets this matter for a hearing on the _____ day of _____, 2014 at _____ o'Clock AM/PM.

OR

3. _____ Finds that no unethical behavior by Counsel has occurred and DENIES the motion.

Signed this _____ day of _____, 2014

Henry J. Bemporad
United States Magistrate Judge