

ETHICS OPINION

RO-92-04

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QUESTION:

"This is to follow up our conversation of last week in which we discussed my firm's position in a lawsuit in South Alabama. Please accept this letter as my law firm's request for guidance on the question of whether we may ethically withdraw from the case at this point.

A brief rendition of the facts of the case may be helpful to you. In May of 1991, my law firm became involved in a lawsuit in ██████ County, Alabama. We filed suit alleging, among other things, breach of contract, fraud, and environmental damage.

The facts which gave rise to the lawsuit are as follows. At one time, our clients were the owners of a 250 acre tract of property near the City of ██████, Alabama. Our client's fell into financial difficulty and found it necessary to sell this tract of land. The defendant in the ██████ County lawsuit is the purchaser of the property. The defendant purchased the entire tract with the exception of one-acre parcel which sits in the middle of the tract. Our client's dwelling sits on this one-acre parcel. Our client has access to his property by way of an access easement which runs from his one acre to the public highway. A rough sketch of the property is enclosed to aid you in visualizing the area.

As part of the conveyance, our clients negotiated a right to repurchase the property within three years of the sale. There is some question as to whether our clients will ever be in a position to exercise the option due to their financial condition.

Subsequent to the sell of the property, the defendant began to do a considerable clean up operation on his newly purchased property. The defendant began to tear down a number of old, rotted chicken houses which were on the property. The defendant also destroyed and completely rebuilt a dam for a large pond on the property. Furthermore, the defendant cleared a good deal of what he considered 'trash' trees from the property. During his clean up operation, the defendant began to dig large pits on the property. Old tires were trucked to the property and thrown into the pits along with trash generated from the tearing down of the chicken houses and clearing of the trash trees. All of the materials in the pits were then set afire and allowed to burn freely.

These pits with burned refuse in them amount to an illegal dump under ADEM regulations. Thus, we filed a lawsuit against the defendant because of this alleging fraud and breach of contract. Our theory is that the illegal dump amounts and an unreasonable and bad faith interference with our clients' right to repurchase the property within three years.

Subsequent to our filing of the lawsuit, one of our clients began what amounts to a feud with the defendant. Our client has become involved in several petty disputes with the defendant, which in our view, have materially diminished our ability to represent him in this case.

The first indication of a problem came to us several months ago when our client was accused of malicious mischief in the second degree. The

defendant alleged that our client had maliciously damaged a cattle gate which he had placed up on his property. The gate was also at the point of beginning of my client's access easement to his reserved one acre of property. However, at that time, the defendant had not placed a lock on the gate nor had he restricted my client's access to his property in anyway. Despite this fact, my client admitted that he had taken the gate off the hinges and had bent its hinges in such a way as to prevent its being rehung. This case was eventually tried in [REDACTED] Municipal Court and our client was convicted of malicious mischief.

After this incident, I explained to our client that he must refrain from these petty squabbles with the defendant. I told him in no uncertain terms that if he had a problem with the defendant he should call me first before he did anything.

Recently, I received a call from the defendant's attorney. He informed me that the defendant's gate had been left open and that the defendant's cows had been allowed to wander away from the property. This created a significant hazard to area motorists.

I confronted my client about this incident. He did not deny that he left the gate open and allowed the defendant's cows to escape. However, he did state to me that he would not 'recognize' the defendant's right to put up a gate on the property because he considered it to be an unreasonable interference with his access easement. My client contends that he owns the property which is described within the bounds of the access easement. Despite my best efforts to explain to him the rights of an easement owner, he contends that he owns the area described within the easement and will tolerate no interference with it.

After this latest incident with the defendant's cows, the defendant's lawyer and I discussed to a compromise whereby the defendant would be allowed to put a lock on his gate so that he would know it would be secure. However, the defendant would provide my client with a key to the lock so that he could freely have access to his property. I relayed this proposition to my client and he flatly refused to go along with it. He still contends that he owns the easement property and that he should not have to have a key to get onto his own property.

At this point, it is obvious to me that my client does not wish to heed my advice nor does he intend to cooperate in my firm's representation of him. On the contrary, it is obvious to me that my client intends to continue his petty feud with the defendant. It is obvious to me and my partners that our case has already been materially damaged by our client's actions thus far. "Our question is whether we may ethically withdraw at this point because our client refuses to cooperate with us or follow our advice."

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ANSWER:

You may ethically withdraw from representation of your client at this point due to your client's refusal to cooperate with you or follow your advice.

DISCUSSION:

The applicable ethical principle concerning your fact situation is found at Rule 1.16, Alabama Rules of Professional Conduct (ARPC), specifically, subsection (b)(3), which states as follows:

"Rule 1.16 Declining or Terminating Representation

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(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

\* \* \*

(3) the client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;"

Pursuant to Rule 1.16(b)(3), you may withdraw from representing the present client since the client has demonstrated by his past actions his refusal to heed your advice and conduct himself in accordance with applicable law. As stated in the Comment to Rule 1.16:

"Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it."

Based on the prior misconduct and conviction of your client, and his refusal to accept the requirements of the law applicable to the property rights he possesses, you may ethically withdraw from representation of the client. This conclusion is further supported by your belief, based on your client's previous actions, that he will, in the future, continue to refuse to follow your advice and possibly contravene other laws applicable to his particular situation.

Consistent with your withdrawal, please heed the provisions of Rule 1.16(d) which states as follows:

"Rule 1.16 Declining or Terminating Representation

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(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law."

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Strict compliance with this provision of the Rules of Professional Conduct would insure transition for the client to possible substitute counsel, and likewise conform your conduct in these matters to the Rules of Professional Conduct.

JAM/bm

2/13/92