

CASE NO. 6368 CRB-7-20-1
CLAIM NO. 700160024

: COMPENSATION REVIEW BOARD

KATHY A. VELKY
CLAIMANT-APPELLANT

: WORKERS' COMPENSATION
COMMISSION

v.

: FEBRUARY 19, 2020

REGIONAL SCHOOL DISTRICT #12
EMPLOYER

and

CIRMA
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant appeared at oral argument. Counsel of record, Clayton J. Quinn, Esq., The Quinn Law Firm, L.L.C., 204 S. Broad Street, Milford, CT 06460, appeared in support of his Motion to Withdraw Appearance.

The respondents were represented by Colette S. Griffin, Esq., Howd & Ludorf, L.L.C., 65 Wethersfield Avenue, Hartford, CT 06114-1121, who attended oral argument but did not participate in the proceedings.

This Motion to Withdraw Appearance, regarding the Petition for Review from the December 16, 2019 Finding and Dismissal of Michelle D. Truglia, the Commissioner acting for the Seventh District, was heard January 31, 2020 before a Compensation Review Board panel consisting of the Commission Chairman Stephen M. Morelli and Commissioners Randy L. Cohen and William J. Watson III.

RULING RE: MOTION TO WITHDRAW APPEARANCE

STEPHEN M. MORELLI, CHAIRMAN. This Motion to Withdraw Appearance (hereafter motion), regarding the Petition for Review from the December 16, 2019 Finding and Dismissal (hereafter finding) of Commissioner Michelle D. Truglia (hereafter commissioner), acting for the Seventh District, was heard on January 31, 2020, before a Compensation Review Board panel consisting of the Commission Chairman Stephen M. Morelli and Commissioners Randy L. Cohen and William J. Watson III.

On January 7, 2020, the Compensation Review Board received a letter from claimant's counsel, Attorney Clayton J. Quinn. The letter advised that he would not be "involved" in the above-referenced appeal. On January 13, 2020, a letter was sent to Attorney Quinn essentially advising that if he did not intend to represent the claimant in her appeal from the finding, he should file a motion to withdraw as counsel and provide the grounds in support of his motion.

On January 15, 2020, Attorney Quinn filed a motion stating:

The undersigned and the Claimant have a different view of the Finding and Dismissal. Without breaching the attorney-client privilege, the undersigned can state that the Claimant does not wish to follow the legal advice of the undersigned as it pertains to the appeal. As such, the attorney-client relationship as it relates to an appeal to the CRB has irretrievably broken down. The undersigned has advised the Claimant to seek alternative counsel to represent her interests.

On January 31, 2020, the parties appeared before this panel and counsel's motion was heard. At the outset, the claimant stated that her objection to Attorney Quinn's motion was that she did not wish to terminate his representation of her interests.

In addition to the allegation in his motion as to the breakdown of the attorney-client relationship, Attorney Quinn cited Rule 3.1 of the Rules of Professional Conduct¹ in support of his motion to withdraw. Attorney Quinn suggested that he and the claimant were not in agreement as to his legal advice.

During his appearance before the board, Attorney Quinn also referenced the existence of attorney-client privilege. He implied that the privilege required him to be circumspect in any representations he made to the board. We are also mindful that all attorneys appearing in this forum owe a duty of candor to the tribunal.² Considering the assertions of counsel and the claimant against this legal backdrop, we grant Attorney Quinn's motion.

Rule 3.1 provides in part, "a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification

¹ Rule 3.1 states: "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established."

² Rule 3.3 states: "(a) A lawyer shall not knowingly: (1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (2) Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or (3) Offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. (b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. (c) The duties stated in subsections (a) and (b) continue at least to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6. (d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse. (e) When, prior to judgment, a lawyer becomes aware of discussion or conduct by a juror which violates the trial court's instructions to the jury, the lawyer shall promptly report that discussion or conduct to the trial judge."

or reversal of existing law.” In O’Brien v. Superior Court, 105 Conn. App. 774, 786–87 (2008), our Appellate Court stated:

The objective “reasonable attorney” standard governs the determination of whether a lawyer’s claim is frivolous. See *Schoonmaker v. Lawrence Brunoli, Inc.*, 265 Conn. 210, 255, 828 A.2d 64 (2003); *Brunswick v. Statewide Grievance Committee*, 103 Conn. App. 601, 615, 931 A.2d 319, cert. denied, 284 Conn. 929, 934 A.2d 244 (2007); 2 G. Hazard & W. Hodes, *The Law of Lawyering* (3d Ed. Sup. 2007) § 27.12 (“[r]ule 3.1 adopts an objective as opposed to a subjective standard”); 2 Restatement (Third), *Law Governing Lawyers* § 110, comment (d), p. 172 (2000) (“frivolous position is one that a lawyer of ordinary competence would recognize as so lacking in merit that there is no substantial possibility that the tribunal would accept it”). In addition, we recently have recognized that, although a claim need not be based on fully substantiated facts when filed, once it becomes apparent that the claim lacks merit, an attorney violates rule 3.1 by persisting with the claim, rather than withdrawing it. *Brunswick v. Statewide Grievance Committee*, *supra*, at 619 (“rule 3.1 prohibits an attorney from asserting . . . a claim on which the attorney reasonably is unable to maintain a good faith argument on the merits”).

(Emphasis ours.) *Id.*

Most recently we noted in Bernard v. Shop Rite Supermarket, 6328 CRB-4-19-5 (November 5, 2019) Ruling Re: Motion to Withdraw Appearance, when considering an attorney’s motion to withdraw we refer to Rule 1.16 of the Rules of Professional Conduct.³ There are two specific subsections of Rule 1.16 we believe are significant to

³ Rule 1.16 states: “(a) Except as stated in subsection (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) The representation will result in violation of the Rules of Professional Conduct or other law; (2) The lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client; or (3) The lawyer is discharged. (b) Except as stated in subsection (c), a lawyer may withdraw from representing a client if: (1) withdrawal can be accomplished without material adverse effect on the interests of the client; (2) the client persists in a course of action involving the lawyer’s services that the lawyer reasonably believes is criminal or fraudulent; (3) the client has used the lawyer’s services to perpetrate a crime or fraud; (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement; (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer’s services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled; (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or (7) other good cause for withdrawal exists.

our review of this motion. They are Rule 1.16 (b) (1) and Rule 1.16 (b) (4) and state permissive withdrawal of an attorney is allowed when “withdrawal can be accomplished without material adverse effect on the interests of the client” and “the client insists on taking an action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.”

We do not believe that the withdrawal of Attorney Quinn from representing the claimant in this appeal will materially adversely affect the interests of the claimant. The claimant is free to consult and procure other representation. To the degree consideration of Attorney Quinn’s motion has made it impossible for the claimant appellant to comply with some of the appellate prosecutorial deadlines, we also grant the claimant thirty days from the date of this ruling to comply with any outstanding appellate deadlines. We believe this extension minimizes the adverse effect on the claimant-appellant as to compliance with time deadlines in the prosecution of her appeal.

We therefore grant the Motion to Withdraw Appearance filed by Attorney Quinn and grant the claimant-appellant thirty days from the date of this ruling to comply with any outstanding appellate deadlines pertaining to this appeal.

Commissioners Randy L. Cohen and William J. Watson III concur.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.”