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IN RE USERS SYSTEM V. NEWS AMERICA PUBLISHING

SOULES: This case involves the contact by one of the original defendants in the case with plaintiff's counsel. The defendant on the same day that the contact was made non-suited and notice of that non-suit was given to the other parties on the same day. Eight months later, the counsel for the defendants took the deposition of Mr. Landreth, one of the plaintiffs, and at least by then knew that the contact had occurred. Seven months after that, the motion for disqualification was filed - just 4 months before its scheduled trial date. The motion for disqualification does not even allege prejudice of a conveyance a confidential information. That is not even alleged in the motion.

There are two issues that I think will be at the heart of this court's decision. One is, is the formal existence with the attorney of record status in the district clerk's record conclusive on the issue of representational status? If that is the case, then my term for that is "the client hostage rule", "or the hostage client rule." Because until the former lawyer acts, the client is hostage. The second issue is, whether disqualification is in the circumstances of this case a suitable remedy for what did occur?

PHILLIPS: Would not it have been better practice for your client at some point to talk to - at least at the next convenient opportunity to make it known to the opposing counsel he no longer represented everybody he seemed to be representing?

SOULES: As far as the focus of this case is concerned if the representational status of record is all that counted, it wouldn't matter.

PHILLIPS: But you don't think that?

SOULES: I do not. And second, if it had occurred after the contact, it probably wouldn't matter either. Because if that's the governing issue, then we have a problem. But I think we do not.

ABBOTT: Is Frazier a lawyer?

SOULES: Frazier is not a lawyer. He is a businessman.

ABBOTT: It seems to me that Frazier didn't just sit down and type up this statement himself. It seems to me that he may have had some guidance in typing this up. Is there any evidence concerning that in the record?

SOULES: There is none. And there was ample opportunity . You see that deposition that was taken in January some 7 months later Mr. Mann went into the nature of the contact and how it happened and never developed that evidence one way or the other.

ABBOTT: So there is no evidence in the record that there was some guidance from Gulde or anybody with Akin Gump or anything like that with regard to preparing this statement or any understanding that had to be achieved before Frazier met with him?

SOULES: In terms of preparing the document, that is correct. The latter part of your question I think has to be answered with more detail. Landreth and Frazier were in contact about settling the differences between the two of them in the case without any orchestration by the lawyers and without knowledge of the lawyers. Landreth and Frazier decided to meet also without orchestration. Landreth arranged to have that meeting in his lawyer's offices. Guley cautioned him that she could not meet with Frazier if he had a lawyer. Landreth said, that he didn't think Frazier had a lawyer. But whatever the status of that might be, the law offices at Landreth's request were the status of the meeting. So they came.

Guley was invited into the meeting and said that she could not speak to Frazier if he was represented. And Frazier presented her with the letter that said he is no longer represented at which point she had secured evidence from him that he was no longer represented and they had a brief meeting. And the substance of that meeting is what is in the record as a two-page handwritten statement by Frazier. That discloses no confidential information. It doesn't touch Frazier's previous representation by Cannan topside or bottom side. It only talks about a document which the plaintiffs had in their possession at the time the suit was filed and was attached to the plaintiff's original _____, and explains how that was the plan in effect to do the by News America. That was the background and that's about all that happened in the lawyers' offices on that day.

O'NEILL: If one of the attorneys stays in the case and the case is tried and Frazier testifies as an expert, is she not subject to being called as a witness to impeach his testimony?

SOULES: Well I think not. There is the lawyer/witness rule. She's not been designated. That wouldn't disqualify Akin Gump or anybody under _____ if she were disqualified, because she would be a material witness. She would not need to be a material witness, however, because her testimony would only be testimony that would corroborate whatever Landreth and Frazier testified to anyway. But she has no knowledge other than the same thing they know.

O'NEILL: But they would be entitled to test her knowledge on what occurred at that meeting. Conceivably she could be on the stand to impeach _____.

SOULES: If she was designated as a witness and the TC determined that her testimony was material, she might not be able to continue. But the firm would be able to continue and the other lawyers would be able to continue under the present Texas _____. That was a change whenever the new rules came in.

HECHT: A lawyer should discourage his or her own client from contacting another represented party on his own?

SOULES: No. That is not correct.

HECHT: The party can do that if he wants to, the lawyer just stays out of it?

SOULES: Absolutely. It says a lawyer is not to encourage that.

HECHT: Don't have to discourage?

SOULES: That's correct.

HECHT: But a lawyer must decline to communicate with a represented party even if the party initiates it as this lawyer did in this case?

SOULES: Rule 4.02 has more provisions than just that. Rule 4.02 says that a lawyer may not communicate with a party that the lawyer knows to be represented. And "knows" is defined in the terminology as actual knowledge of the fact in question. So before the lawyer is required not to communicate, the lawyer must actually know at that time that the party is represented. It's certainly obvious to me the best evidence that the lawyer could have is the party saying, I don't have a lawyer, I've terminated them, I am no longer represented unless we're going to go to the attorney of record rule, the hostage/client rule.

HECHT: Let me ask you about prejudice. What prejudice would there ever be that resulted from this kind of encounter?

SOULES: I think there is a possible prejudice. If the lawyer actually contacted a represented party knowing that the party was represented as happened in the *Shelton v.* _____ case where the represented party made disclosures to the lawyer about the trial strategies or the like, that sort of thing that was going on in the defense camp perhaps that could show prejudice. However, I think even there disqualification is too extreme.

OWEN: This is why I am a little lost. If Frazier had written a letter and his counsel and said, You are fired, I'm going to represent myself pro se in this matter henceforth, why couldn't he have walked across the way and talk to Akin, Gump and told them whatever he wanted to tell them about trial strategy? What's to stop him from doing that?

SOULES: I think there isn't a rule that does that. However, there are vague provisions in the attorney/client privilege rule that somebody might say would trigger protection.

OWEN: Assuming he wasn't trying to waive someone else's privileges?

SOULES: Right.

OWEN: They were his own privileges as well.

SOULES: They were his own privileges. And there is no rule of evidence 5.12 claim in this case that some other party had a privilege that they could have protected or that they want to protect. That's not in this record. And that is a provision in the rules of evidence that you can give other parties the right to step forward and make that claim. As I indicated, that is not even a part of the pleadings in this case.

ENOCH: The issue that concerns me, and I don't even know if it's a concern, but it nags at me, the notion that a party just says I want to get out, and they go and talk to the lawyer representing the other side and they say, Well I'm fired; I don't want to be a part of this; now let's sit down and see if we can't get out of it. Should there be some recognition of a protection for the individual that would keep the opposing attorney who has the benefit of the knowledge, the expertise, the access to the system from using that to basically get a settlement or an agreement out of a party who was in fact represented by an attorney, but because they were so stressed out they said they wanted out of it, whatever it takes, and therefore they give up valuable counsel and advice from their own lawyer. Should there be some sort of thing in this civil deal that keeps an opposing lawyer from basically talking the other side into firing their lawyer and talking to them?

SOULES: Well, yes, I think that is prohibited. I think you set up a hypothetical there where the lawyer is talking to a represented client trying to get them to fire their lawyer. That would be prohibited. On the other hand, Texas has a clear rule that a client can fire their lawyer at anytime for any reason or for no reason. And when that occurs, the attorney/client relationship is at an end.

ENOCH: Suppose one of the parties says, I think this gal will give in and I'll just tell him if you just fire your lawyer we can go up and get this worked out. And so the lawyer is not a part of this. Is there something that ought to say the lawyer ought to take some sort of steps to make sure that's not what's going on?

SOULES: I think we can actually get to the facts of this case in response to that. When the contact with Frazier came, Frazier knew and Guley that Mark Cannan had said that his client News America was not guilty and that the only parties that might have caused any damage were the individual clients that Mark represented. So Frazier is already knowing that his former lawyer is taking the position in favor of a co-party. And Guley knows that. That's another part of her state of mind in this case.

I feel, and I've thought about this a lot, that it's none of my business to be getting into the attorney/client relationship and the former attorney/client relationship between a now proven unrepresented party and their lawyer especially when that proven unrepresented party is a former employee of a co-party that the lawyer represented. And I may by making a contact with the former lawyer be creating risk and prejudice to this individual that I have no business being involved with. And I think there should not be a requirement that the lawyer who's being spoken to call the

lawyer on the other side and say, Fraziers in my office and he wants to talk to me. To add to that then a period of time in which that lawyer on the other side has power and control over that representation by extending it to withdrawal can create all sorts of mischief that you can see we could all imagine could happen to this individual. I think it's not for me to get involved in that situation.

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RESPONDENT

PHILLIPS: Regardless of the merits of your case how come it's not barred under our River Center doctrine?

CANNAN: Could you tell me what you mean by River Center?

PHILLIPS: Waiting too long between each step.

CANNAN: The deposition of Mr. Landreth ended in July, 1996. The motion for sanctions, motion to disqualify was filed within 1 month of the completion of the deposition of Mr. Landreth.

ABBOTT: But didn't you learn about it in January?

CANNAN: I did.

ABBOTT: That's the time period. We're talking about the time period. You learned about it in January and didn't file it until July.

CANNAN: I realize I learned about it in January. Frankly, and I say this in the utmost sincerity, I frankly hoped that the testimony would change that up until the time of the hearing, I was hoping that there was a misunderstanding. In fact, the non-suit was not timed in the way that the non-suit was timed.

ABBOTT: So how can we write that in an opinion that you knew it for a 7-month period hoping that things would change, but golly gee it didn't, and under those circumstances when their counsel hopes that things will change, then you can nevertheless be disqualified?

CANNAN: I not only hoped that it would change, that question was asked in each, not particular to this situation, but in each of the subsequent depositions the questions were asked as to whether any of the testimony in the prior depositions had been reviewed and needed to be changed, and subsequent to the last deposition, the deposition was in fact signed and filed. So that in terms of the evidentiary basis for moving forward on a motion for sanctions it certainly was contemplated during that entire 7-month period that the actual completion of the deposition, the signing and filing

of the deposition and solidifying that that's exactly what the situation was, that that became clear at the completion of the deposition which occurred on July 30, 1996.

ABBOTT: You say that during that time interval between January and July motions for sanctions were contemplated?

CANNAN: Certainly it was in my mind. I don't deny that at all. That clearly bothered me when I heard the testimony in January. It continued to bother me until the time that I filed the motion for sanctions. It bothered me in each of the other sessions. When another lawyer asked Mr. Landreth during one session, was there any changes, had he looked at his other testimony, and in his July 30 deposition session, the completion of his deposition the question was asked, subsequently then the deposition testimony is completed, completely signed and filed and moved forward on the motion in fairly quick response.

BAKER: You mentioned that the line of inquiry had to do with the non-suit was what was concerning you, is that what I understood you to say?

CANNAN: One of the facts that concerned me and surprised me when I heard the testimony was the timing of the non-suit. I think that there were problems all along obviously. And what I discovered happened as I asked the questions in the deposition, that in fact, there had been a meeting, that it had been in Ms. Guley's office or in the offices of Akin, Gump. But the decision to take a non-suit occurred after the completion of that meeting. Mr. Frazier walked out of that meeting having given a statement to counsel for the plaintiff while still a named defendant and it hadn't been decided on behalf of the plaintiffs to non-suit this gentleman. So we take this "formality", and I think it's a heck of a lot more than that, that Mr. Frazier was a named defendant who had counsel of record, who was meeting with counsel for the plaintiff at a time he had counsel of record, that a statement is given about the nature of the lawsuit and then he leaves and they talk, Well, I guess we'll give him a non-suit.

BAKER: Is it correct then that you're knowledge about Mr. Frazier meeting with Mr. Landreth and the attorney at Akin Gump's offices, you knew that in January 1996?

CANNAN: That is correct. But in terms of taking formal steps to challenge that action, I certainly waited until the end of the deposition. I did so obviously quite consciously. That is until that deposition was completed, I didn't feel I had a record that would warrant frankly the drastic relief that we requested in the motion.

HECHT: This seems to conflict with your statement to the TC that if only you had known, if only you had been told by Frazier what he was about to do everything would have been, I think in your words copacetic?

CANNAN: That's the word I used. I will tell you that one of two things would have

happened. If on May 12, 1995, Mr. Frazier or somebody had called me, one of two things would happened: I would have had a discussion with Mr. Frazier and after that discussion, I would have filed a motion to withdrawa. Or, I would have had a discussion with Mr. Frazier and after that discussion, I would have continued to represent him. But neither of those happened.

HECHT: Why is the timing of the non-suit important if that's all that would have happened?

CANNAN: There is the suggestion, and frankly I learned more about the steps leading up to that meeting listening to Mr. Soules than I ever knew before, because a lot of that's not in the record. All we know is that they met. There is the suggestion that this was a settlement conference of some type, that there was a settlement without benefit of counsel. Well the record suggests it's not a settlement because Mr. Frazier walked out of that meeting having given a statement, not knowing whether he was going to be non-suited or not. So that after Mr. Frazier left that meeting it was the option of counsel for the plaintiffs to take a non-suit or to send me a request for admission, or anything else that they could have done given the state of the _____.

HECHT: My point is that after you knew all of that, you're only complaint to the TC seems to have been that you weren't told ahead of time?

CANNAN: I wouldn't say that that was my only complaint. That may be in the record, but certainly the motion itself speaks to it.

HECHT: Maybe I don't understand copacetic. I thought copacetic meant like 5?

CANNAN: I think that a conversation with Frazier or with somebody about it - if I can place myself back in front of the hearing in front of the TC, my suggestion or my meaning was we wouldn't have been there. Now I don't know which of those two courses it would have taken. Whether it would have been a motion to withdraw and he can speak to counsel for the plaintiffs as much as he likes or doesn't like, or would have been another conversation with Frazier leading to my continued representation. It's nonetheless been a technical violation of 4.02 and there probably would have been, I don't believe anything would have been done about that frankly.

HECHT: If your client wants you fired right this second does he have to wait till you get to the courthouse to file the papers?

CANNAN: Vis-a-vis, the client and I, he could communicate that to me immediately and that would cutoff the representation. Vis-a-vis, his status in the court, his status with other parties, I think the rules are clear. I am the attorney in charge of that suit until the court allows me to withdraw and orders are entered to that end. With respect to my client and myself, there is no question that the client has the full ability to terminate that relationship at anytime. And the problem here of course is that that termination of employment was communicated, not to me, not to the court,

but only through the letter of May 12 to counsel for the other side.

OWEN: I'm having a hard time seeing why you are here. Why do you have standing? Why does your current client have standing to complain about this? If you think that the Akin, Gump attorney violated the disciplinary rules, you can take that up with the State Bar of Texas. Why do you have standing in this lawsuit to demand that she be disqualified?

CANNAN: One, because the conduct has certainly impacted the ability to represent my clients in this case.

OWEN: That was going to happen - if Frazier had decided he was firing you and that's not going to change, that was going to happen anyway wasn't it?

CANNAN: Well the presence of present counsel is going to complicate that matter. Given that Frazier is now a witness presumably, he's been identified as an expert witness also a fact witness based upon the statement given...

OWEN: But that could have happened even if he had told you before he went to talk to Akin, Gump is, You are fired, I'm going over to meet with them today. That was still going to happen wasn't it, or could have?

CANNAN: It could have, that's correct. And I would have no problem with that. But now the circumstances whereby that statement was given become part of the impeachment of _____.

OWEN: Which you're fully _____ to bring out at trial.

CANNAN: And what we are faced with is the situation where the conduct of counsel for the plaintiff in my view in violation of the rules becomes an issue before the fact finder as counsel is present in the case. And I think in the cases that that is the type of situation that frankly is so embarrassing to the profession and to the civil justice system itself that that is the type of situation that warrants disqualification. Because it places the counsel for the defendants in the bind of being in front of the fact finder and perhaps explicitly at least implicitly attacking the conduct of counsel for the plaintiffs is in violation of the DR's(?) and that is an intolerable situation in many different respects.

ABBOTT: Let's assume that we are going to apply a strict construction to the rule 4.02 where it talks about a lawyer knows to be represented by another party. As I see the totality of the evidence in the record about the knowledge of Gulde it is based upon the statement provided to Gulde by Frazier.

CANNAN: I would disagree with that.

ABBOTT: Obviously Gulde knew that Frazier had previously been represented. But as of the time of the meeting, Gulde was informed directly by Frazier that Frazier was no longer represented by counsel.

CANNAN: In given the state of the pleadings that was an incorrect statement, which a lawyer who is familiar with the state of their pleadings would have knowledge that that is an incorrect statement. The manner of clearing up that confusion if in fact it was confusion would be to check the court records. The court records would reflect that. To call to see if a motion to withdraw had been filed. To ask Frazier if Frazier had contacted his attorney and requested that his attorney file a motion to withdraw that hadn't been filed.

ABBOTT: But you agreed earlier that whether or not you have an attorney/client relationship is not governed by what pleadings may be on file at the courthouse, but is governed by the relationship in effect between the attorney and client. And if a client wants to terminate their relationship with a lawyer, the client doesn't have to go out and get the permission of the lawyer or get the permission of the court. The client can terminate it then, period.

CANNAN: I disagree that he does not need to get the permission of the court. Because the motion to withdraw before the court can be denied, or it can be granted in either conditions that the court so determines.

ABBOTT: So if the client no longer wants to have a relationship with a lawyer, you're saying that the court can say, Tough, I'm going to make you be represented by that lawyer?

CANNAN: In unusual circumstances that may well happen. There's no reason to believe it would have happened in this case.

ABBOTT: Would you agree that the written statement by Frazier is a fact for the TC to consider?

CANNAN: It is.

ABBOTT: And why would the written statement by Frazier saying that he is no longer represented by his former counsel not be a fact upon which would mean that the TC's ruling would not be an abuse of discretion?

CANNAN: Because the only fact that that illustrates was an intent on the part of Mr. Frazier to terminate that relationship.

ABBOTT: He said, I hereby state that I am no longer represented by any attorney in this matter.

CANNAN: In the context of the fact that there had been no withdrawal, in the context that he had not communicated that to his attorney, which was before the TC, all that fact was irrespective of the language, the only fact that was before the TC is that he evidenced an intent to discharge his attorney. That intent never came to fruition with respect to the pending lawsuit and the state of the pleadings. It never came to fruition with respect to his counsel that the TC was well aware that defense counsel had not been informed of either intent or fact determination, and the TC had never been informed of that. Recall what I conceded if that's what it was that there was this right to terminate involved a communication from the client to attorney terminating the relationship. That communication never occurred.

OWEN: I thought you said in your brief that the filing of the non-suit effectively severed the relationship?

CANNAN: Because the purpose of the relationship, I was representing him as a defendant in a lawsuit, he was no longer a defendant in the lawsuit. As of the non-suit, that there was no matter in which he was being represented. As I said to the TC this is in the record. Sometimes it's hard to distinguish these when you are so personally involved. But as I pointed out to the TC, I had a conversation with Mr. Frazier. Immediately after I was going to file a non-suit. And that as a result of that, I did not learn in that telephone conversation that he had ever evidenced even intent or an act of terminating me.

ABBOTT: There have been instances in the past where a disciplinary action has been taken against lawyers who fail and refused to file a motion to withdraw upon the request by a client to terminate their relationship. Why does that scenario not complicate your situation of saying that well the motion to withdraw must be on file in order to give knowledge to the other side that there is a termination in the relationship?

CANNAN: Presumably in that situation, that extreme situation, that would be brought to the attention of the court by whomever. I would assume that if counsel for the other side of that where the party's attorney refuses to withdraw, if that is communicated to opposing counsel, opposing counsel is going to go right to the court and there would be court intervention immediately to resolve that issue.

OWEN: What if Mr. Frazier on the morning of May 12 had faxed you a copy of his letter to the Akin Gump lawyer and said, I am terminating, you no longer represent me. What would have been your recourse at that point?

CANNAN: To file a motion of withdrawal.

OWEN: But you couldn't have stopped the meeting with _____?

CANNAN: That's not to say I wouldn't have attempted or any lawyer wouldn't have

attempted to contact his client or soon to be departed client. Having disagreements with clients is the nature of the business I suppose in many respects.

OWEN: Assuming Frazier said, No, I've got a meeting at 10:30, I'm going and hung up. What's your recourse?

CANNAN: I'm going to file a motion to withdraw. I don't believe I have a recourse.

OWEN: And under those circumstances, you would have no complaint about Frazier meeting with Akin Gump attorneys?

CANNAN: I would probably write a letter to the counsel on the other side.

OWEN: So your only concern is you weren't told of his meeting?

CANNAN: No. My only complaint is that 4.02 and the rules of procedure governing who is in charge of a case were totally ignored. And as a result of that, there was - and this is perhaps not my complaint. Perhaps it's a complaint that the bar the profession should be aware of and the cases say that is a concern for this court. And that is, the over-reaching nature of contact with a represented party. Bare in mind that unrepresented Frazier walked out of that meeting not knowing he was going to get a non-suit. A heck of a deal. Was that over-reaching? I don't know. I don't know what went on in that meeting. I don't know what led up to it. There is some suggestion that I had the opportunity to investigate that, by Mr. Soules's suggestion, I had an opportunity to investigate that in the subsequent depositions, which would turn depositions into inquiring into attorney conduct.

OWEN: Going back to my example. Let's suppose Mr. Frazier had called you that morning on May 12. Would you say that Ms. Gulde violated the ethical rules by going forward and meeting with him even though there was not time to file a motion to withdraw?

CANNAN: I suspect things would have been copacetic because I would have spoken to Frazier at that time. Perhaps he wouldn't have decided that he wanted to terminate me.

OWEN: Let's assume he said, No, I am steadfast?

CANNAN: Then I would have written a letter to Ms. Gulde. I suspect we would have had the dialogue before that meeting. That dialogue in all - assuming that minds were set as they apparently were, would have resulted in a motion to withdraw. Perhaps a postponement of the meeting. I don't understand what the emergency was of the meeting.

OWEN: Given now that Mr. Frazier is not here claiming undue influence or over-reaching or any of those things what is the harm and what justifies disqualification?

CANNAN: The harm is that there may have been over-reaching and that the situation lends itself to over-reaching.

OWEN: How is there over-reaching? Mr. Frazier is happy. He's out of the lawsuit.

CANNAN: Technically he is not. He wasn't when he walked out of the meeting for one thing.

OWEN: But he is now?

CANNAN: He is now as an individual. You will note in the 2nd amended petition of the plaintiffs there is another party to the lawsuit called Group Investment Club, which is Shaffar, one of my clients _____, one of my clients in Frazier as joint investors. That entity is still in the lawsuit. So even with that nonsuit, Mr. Frazier is still a party as a partner of Group Investment Club. Was there some over-reaching in that meeting as a result of his staying in the lawsuit as an individual partner of that club? I don't know.

OWEN: But isn't that something Mr. Frazier should be raising and not you?

CANNAN: He may, but he doesn't have this form to raise...

OWEN: He could raise it in the grievance. You say he's still a party, he could raise it in the TC, he could raise it in a grievance proceeding.

O'NEILL: How do you respond to Mr. Soules' concern about it shouldn't be the lawyer's position to have to interfere, but he should be able to take it at face value if someone says, I'm no longer represented, doesn't it put him in a vicarious position if you are now going to expect him to call the other lawyer, see if that's in fact the case? I can understand some of the concerns that could arise in this situation.

CANNAN: I would have a concern in a nonlitigation aspect if that were the situation But in a litigation aspect there is a responsibility imposed upon the court, defense counsel and plaintiff's counsel by the state of the pleadings. Imposed upon defense counsel was responsibility for the suit. Now imposed upon the plaintiff's counsel was an obligation to recognize my responsibilities and the dictates of the rules. In the situation of litigation, whether they say it verbally or in a letter, the letter is a red herring. It could have been verbal. It could have been in a letter. I'm no longer represented, that there is a duty to inquire where the pleadings are such that it's not true. And it wasn't true in this case. And so because of the duty imposed by the pleadings, there was a duty to inquire beyond the mere statement. I think that's the text of relevant portions of the ABA 95-396 opinion.

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REBUTTAL

SOULES: So that hopefully the record doesn't get confused, after Jan. 1996, there was no further development of the information about the May 1995 meeting. That deposition that was taken in January had already been signed and filed. And you will find that information in Mr. Cannan's questioning in the July deposition at page 396 where he confirms that the deposition in January had already been filed and that there were no changes made. So he knew that.

A piece of my argument that I didn't reach earlier is that there are disputed issues of fact here. This court's decision in *Harris v. Dougherty*, 1989, makes it categorically plain that the very existence of an attorney/client relationship was a question of fact.

PHILLIPS: As I understand opposing counsel's argument the premise, the bedrock of it is that the literal text means 10 and 12.

SOULES: Or 8 and 10. Those rules were amended about 10 years ago. But they were not amended for any purpose to affect the attorney/client relationship with their client's ability to discharge counsel. It had nothing to do with 4.02 or its predecessors. It was just a way to get the record cleaned up because the problem was the lawyers were withdrawing, sometimes not even telling their clients that they were going to withdraw, not getting their client's signature on motions to withdraw, judges were signing orders permitting lawyers to withdraw. At times the withdrawal was not even made known to other counsel. Pleadings continued to get filed, served on lawyers that had been permitted to withdraw. And it was a mess. And there had to be something fixed in the record of the trial judge and the district clerk to straighten out things in court. But that had nothing to do with any limitation on a client to terminate counsel.

OWEN: But there are several different issues here. We could recognize that the client relationship terminated as soon as Mr. Frazier decided it did and notwithstanding that, we could imposed certain obligations on opposing counsel that would not interfere with that decision by Mr. Frazier couldn't we? And there are two separate things: regulating lawyers as opposed to determining when the attorney/client relationship began or ended.

SOULES: Had there not been a nonsuit, then under rule 8.10 Frazier would have had an obligation to move to substitute himself from pro se. But none of that was ever triggered because he was non-suited.

OWEN: But that wouldn't effect what we're about here. The meeting occurred before the non-suit was filed.

SOULES: That's correct. He was a dismissed party.

OWEN: Not at the time of the meeting?

SOULES: Not at the time of the meeting. At the time of the meeting, we had the

evidence that we've already discussed today about the termination of counsel...

OWEN: It's one thing to say he can terminate as counsel. It's another to let opposing counsel meet with him until his counsel is formally withdrawn. Those are two different things.

SOULES: Those are two completely different things. And I'm speaking to the latter. I've tried to explain the trepidation that I see in the lawyer who's being approached by a now pro se client getting involved in the previously relationship. I think that's none of his business.

OWEN: The lawyer could simply say, I'll talk to you as soon as the motion to withdraw is granted. He wouldn't have to tinker.

SOULES: Then, that puts the control of that now pro se client in the hands of the discharged lawyer as to timing of when that contact can take place and puts that now pro se client at risk of whatever the consequences may be that may come from his former employer, his former lawyer and the like. I think that is absolutely different contrary to what the disciplinary rules require.