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ON TOPIC

Withdrawal: Know when it's right

WARNING SIGNS WILL INDICATE WHEN the attorney-client relationship should—or must—be ended

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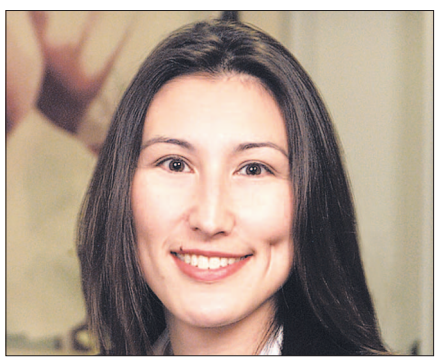

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ONE OF THE MOST effective legal malpractice claims prevention techniques is knowing when and how to end an attorney-client relationship that is destined for trouble.

Every attorney recognizes that sometimes situations arise in which the safest and best course is to terminate the attorney-client relationship. It may be a client that refuses to follow the attorney's advice, a dishonest client, or one that fails to pay its bills. Regardless, these types of relationships only get worse over time, not better.

Clients are entitled to terminate their attorney-client relationship at any time for any reason. But the rules are different for attorneys who want to terminate a relationship with a client. This is a two-part series that addresses when an attorney can and should terminate a client relationship (Part 1); and how to terminate the relationship, i.e., the procedure for withdrawal, assuming withdrawal is permissible (Part 2).

Mandatory withdrawal

In some situations, the decision is actually easier than many attorneys appreciate because withdrawal is mandatory. They include situations where: (1) the representation will result in a violation of law, including the Rules of Professional Conduct; (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or (3) the client fires the lawyer.

One example occurs when an irreconcilable conflict arises during the representation of multiple-client parties whose interests are originally aligned. If the interests of those parties later conflict, the lawyer would be unable to continue the representation of both parties without violating the Rules of Professional Conduct. In such situations, depending on the representation and conflict at issue, the attorney would be required to withdraw.

The important point is that there are some circumstances when there is no option. If any of these three situations arise, the attorney must withdraw.

Permissive withdrawal

Rule 1.16 of the Georgia Rules of Professional Conduct lists the circumstances in which an attorney may withdraw. The rule covers a wide range of scenarios, including when a client fails to fulfill its obligations to the attorney, i.e., pay the attorney or be honest with the attorney. Rule 1.16 also contains a catch-all category for cases where "other good cause for withdrawal exists."

To withdraw, an attorney must give the client "reasonable warning" that the attorney will withdraw unless the client fulfills its obligations. The one condition common to each of the grounds for withdrawal enumerated in Rule 1.16 is that it must be accomplished "without material adverse effect on the interests of the client." The key question underlying these situations is: Assuming I can withdraw, should I?

When to withdraw

Some situations merit withdrawal assuming the attorney can do so "without material adverse effect on the interests of the client." These include situations where there are clear red flags that things have gotten so far off track that the situation will only get worse. Here are a few.

The bottom line is that when a client stops or refuses to pay, attorneys should consider the option of withdrawal long before the representation reaches the crisis point.

1. The client stops paying or refuses to pay.

When clients stop paying, there is a problem. The question is whether the situation can be fixed. Every situation differs, based on the facts and circumstances. But the one solution that almost never works is to ignore it and hope it goes away.

Instead, when clients stop paying, attorneys should pause, consider why the client has stopped paying, and determine whether the situation can be remedied. This involves a candid assessment of both the client's ability and willingness to pay.

A client's failure or refusal to pay its bills could be a sign that it is unhappy with the services provided by the lawyer. This is especially true if coupled with actual complaints or other noticeable changes in the relationship between the attorney and the client.

On the other hand, a client's inability to pay can be just as worrisome. Law practices cannot survive by providing services to client who can never pay. The bottom line is that when a client stops or refuses to pay, attorneys should consider the option of withdrawal long before the representation reaches the crisis point.

2. The client is dishonest.

Trust is a foundational element of an effective attorney-client relationship. Not only must the client trust the attorney's ability and willingness to represent its interests, but also the attorney must be able to trust that the information provided by the client is accurate and truthful.

Lawyers rely on the information provided by clients in representing their interests in front of judges, other lawyers or other third parties. Relying on false information in those contexts— even though through no fault of the attorney—can not only harm the client's interests, it can also permanently damage the attorney's reputation, undermining the ability to effectively advocate for other clients in the future.

3. Changes in the relationship happen.

Sometimes the best reason to consider withdrawal is completely intangible. Attorneys often know when attorney-client relationships change, long before something actually happens. Once they start, they rarely improve without a candid conversation about what is happening and why.

Not all changes should lead to withdrawal, of course. But when they happen, attorneys must react or consider withdrawal.

For example, if the client seeks a second opinion in connection with the representation, something is not right in the relationship. In particular, if the client seeks a second opinion without telling the attorney in advance, something is definitely not right. The key is to avoid casting a blind eye when these kinds of things happen.

There are other indicators of problems in the making. These include complaints, especially if they are in writing, about attorney services or billings. Once the client moves from generic grumbling about undefined concerns to specific issues with what was done or how much it cost, the time has come to carefully consider the situation. When those concerns are confirmed in writing, the time has come to act.

More often than not, these situations tend to get worse over time. Just marching forward and continuing the representation without a change is not a solution. Worse yet, it may only confirm a client's concern that the attorney has lost touch, providing additional fodder for an unhappy client.

If there are no meaningful responses, written complaints morph into demands, which eventually become legal malpractice claims. Somewhere along this spectrum, the safe solution is to stop and consider the options.

Attorneys are the best judges of whether they should continue handling a matter. What's important is that attorneys pay attention, recognize the warning signs, ask the right questions, and follow their instincts.

The answer may be withdrawal. If so, there is no good reason to postpone the inevitable. The better solution is to prevent a bad situation from become a worse problem by ending the representation.

This is the first in a two-part series on when and how to withdraw. Part 2 will describe how to withdraw. DR

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