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Firing a Client – Or is the Customer Always Right?

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It will happen to all of us eventually: We will accept the representation of a client and for any number of reasons, that representation will prove so problematic, we want to withdraw as counsel. The reasons span from personal issues of the lawyer involved to those having to do with the specific matter or even the client. Many lawyers view withdrawal as a tricky matter, and rightfully so! There are very few “bright lines” to guide the way to a problem-free withdrawal. Even though no definitive “how-to” guide exists, there is guidance available from the courts and the Board of Commissioners on Grievances and Discipline.

The first requirement is that the lawyer have a sufficiently good reason to withdraw.¹ Withdrawal is required where: (1) the lawyer knows his client’s goal in the representation is merely for the purpose of harassing or injuring another person; (2) continued employment representing the client will result in the violation of a Disciplinary Rule; (3) it is unreasonably difficult for him to carry out the representation effectively due to the lawyer’s mental or physical condition; (4) he is discharged by the client;² (5) the lawyer learns or it is obvious that he will be called as a witness on behalf of his client, and that his testimony will be prejudicial to the client,³ or (6) the lawyer discovers that his representation of a client will be, or is likely to be, adversely affected by his representation of another client, unless it is obvious the lawyer can adequately represent each client and they consent after full disclosure.⁴

Withdrawal is *optional* where: (1) the client insists on presenting a claim or defense which is frivolous; (2) the client seeks to pursue an illegal course of conduct; (3) the client insists his lawyer pursue an illegal course of conduct, or one that violates the Disciplinary Rules; (4) by his conduct, the client renders effective representation unreasonably difficult;

(5) the client insists, in a matter not pending before a tribunal, that his lawyer act in a manner contrary to the advice and judgment of the lawyer, although not otherwise prohibited by the Disciplinary Rules; (6) the client deliberately disregards an agreement or obligation to his lawyer, as to the payment of fees or expenses; (7) continued representation is likely to result in a violation of the Disciplinary Rules by the lawyer; (8) where because of an inability to work with co-counsel withdrawal will best serve the client’s interest; (9) the lawyer’s mental or physical condition makes it difficult to carry out the representation effectively; (10) the client knowingly and freely assents to the termination of the representation; or (11) the lawyer believes in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.⁵

If permission for withdrawal is required by the rules of a tribunal, a lawyer cannot withdraw without obtaining the permission of that tribunal.⁶ In fact, the Rules require that where the above reasons are not the grounds for withdrawal in a matter pending before a tribunal, a lawyer may not request withdrawal.⁷

The lawyer must also inform the client and co-counsel of his request to withdraw.⁸ The notification does not have to be in writing.⁹ But keep in mind that the primary goal when withdrawing from representation is to avoid prejudicing the position of your erst-while client.¹⁰ The client should be given sufficient notice to permit the hiring of new counsel.¹¹ Lawyers considering withdrawal should also consider the effect of various deadlines, such as those imposed for discovery, expert disclosure and dispositive motions, and the ability of new counsel to quickly assume command of the matter. Therefore, the notice should be given to all parties as early as possible.

The attorney should return to the client all documents and papers to which the client is entitled.¹² This includes, but is not limited to: all significant correspondence, investigatory documents, and reports the client has paid for, filed or unfiled pleadings and briefs, and all materials and documents supplied by the client.¹³ In addition, any unearned fees or other

property belonging to the client should be returned.¹⁴ However, a lawyer may retain a copy of the client's file as long as he does not charge the client for copying the file.¹⁵ The lawyer is also entitled to payment for his services before his withdrawal.¹⁶ Even when representation is on a contingency basis, recovery can be had upon the happening of the contingency, on the basis of quantum meruit.¹⁷

The final guideline is that the lawyer should be careful not to accept representation of a new client in any action against the former client if the new representation is substantially related.¹⁸

Although there are no concrete steps to follow, since by their nature the circumstances of each representation are different, following these guidelines and always acting to protect your client are the best insurance to a smooth transition for the client, and a smooth withdrawal for the lawyer.

Brian Goldwasser and Candace Erison are attorneys with the Cincinnati Office of Reminger & Reminger Co., L.P.A. OBLIC wishes to thank them for their kind permission to reprint this article, which first appeared in the July 2000 "CBA Report."

Footnotes

- 1) *W. Wagner & G. Wagner Co., L.P.A. v. Block*, 107 Ohio App.3d 603, 669 N.E.2d 272 (Ohio Ct.App. 1995).
- 2) Model Code of Professional Responsibility

- DR 2-110(B) (1995).
- 3) Model Code of Professional Responsibility DR 5-102(1995).
- 4) Model Code of Professional Responsibility DR 5-105(1995).
- 5) Model Code of Professional Responsibility DR 2-110(C)(1)(1995).
- 6) Model Code of Professional Responsibility DR 2-110(A)(1)(1995).
- 7) Model Code of Professional Responsibility DR 2-110(C) (1995)
- 8) *Akron Bar Ass'n v. Johnstone*, 54 Ohio St.2d 485, 377 N.E.2d 790(1978).
- 9) *Trumbull County Bar Ass'n v. Donlin*, 76 Ohio St.3d 152, 666 N.E.2d 1137(1996).
- 10) Board of Comm'rs On Grievances & Discipline Op. 88-024(8-12-88); *Cincinnati Bar Ass'n v. Stern*, 78 Ohio St.3d 533, 679 N.E.2d 265(1997).
- 11) Board of Comm'rs On Grievances & Discipline Op. 88-024 (8-12-88).
- 12) *Jd, Akron Bar Ass'n v. Williams*, 77 Ohio St.3d 163, 672 N.E.2d 632(1996).
- 13) Board of Comm'rs On Grievances & Discipline Op. 92-008 (4-10-92); *see also* Board of Comm'rs On Grievances & Discipline Op. 88-024(8-12-88).
- 14) *Cleveland Bar Ass'n v. Cox*, 83 Ohio St.3d 218, 699 N.E.2d 455(1998); *Office of Disciplinary Counsel v. Leibold*, 53 Ohio St.3d 128, 559 N.E.2d 749(1990).
- 15) Board of Comm'rs On Grievances & Discipline Op. 92-008(4-10-92).
- 16) Board of Comm'rs On Grievances & Discipline Op. 88-024(8-12-88).
- 17) *Belovich v. Saghafi*, 104 Ohio App.3d 438, 662 N.E.2d 391(Ohio Ct.App. 1995).
- 18) Model Code of Professional Responsibility DR 5-105, DR 4-101(1995); Board of Comm'rs On Grievances & Discipline Op. 88-024(8-12-88).

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