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CHAPTER XII

WITHDRAWAL

RULE

The lawyer owes a duty to the client not to withdraw services except for good cause and upon notice appropriate in the circumstances.¹

COMMENTARIES

Guiding Principles

1. Although the client has a right to terminate the lawyer-client relationship at will, the lawyer does not enjoy the same freedom of action. Having once accepted professional employment the lawyer should complete the task as ably as possible unless there is justifiable cause for terminating the relationship.²
2. The lawyer who withdraws from employment should act so as to minimize expense and avoid prejudice to the client, doing everything reasonably possible to facilitate the expeditious and orderly transfer of the matter to the successor lawyer.³
3. Where withdrawal is required or permitted by this Rule the lawyer must comply with all applicable rules of court as well as local rules and practice.⁴

Obligatory Withdrawal

4. In some circumstances the lawyer will be under a duty to withdraw. The obvious example is following discharge by the client. Other examples are:

- (a) if the lawyer is instructed by the client to do something inconsistent with the lawyer's duty to the court or tribunal and, following explanation, the client persists in such instructions;
- (b) if the client is guilty of dishonourable conduct in the proceedings or is taking a position solely to harass or maliciously injure another;
- (c) if it becomes clear that the lawyer's continued employment will lead to a breach of these Rules such as, for example, a breach of the Rule relating to conflict of interest (*Chapter V*); or
- (d) if it develops that the lawyer is not competent to handle the matter.

In all these situations there is a duty to inform the client that the lawyer must withdraw.⁵

Optional Withdrawal

5. Situations where a lawyer would be entitled to withdraw, although not under a positive duty to do so, will generally arise only where there has been a serious loss of confidence between lawyer and client. Such a loss of confidence goes to the very basis of the relationship. Thus, the lawyer who is deceived by the client will have justifiable cause for withdrawal. Again, the refusal of the client to accept and act upon the lawyer's advice on a significant point might indicate such a loss of confidence. At the same time, the lawyer should not use the threat of withdrawal as a device to force the client into making a hasty decision on a difficult question. The lawyer may withdraw if unable to obtain instructions from the client.⁶

Non-Payment of Fees

6. Failure on the part of the client after reasonable notice to provide funds on account of disbursements or fees will justify withdrawal by the lawyer unless serious prejudice to the client would result.⁷

Notice to Client

7. No hard and fast rules can be laid down as to what will constitute reasonable notice prior to withdrawal. Where the matter is covered by statutory provisions or rules of court, these will govern. In other situations the governing principle is that the lawyer should protect the client's interests so far as possible and should not desert the client at a critical stage of a matter or at a time when withdrawal would put the client in a position of disadvantage or peril.⁸

Duty Following Withdrawal

8. Upon discharge or withdrawal the lawyer should:
- (a) deliver in an orderly and expeditious manner to or to the order of the client all papers and property to which the client is entitled;⁹
 - (b) give the client all information that may be required about the case or matter;
 - (c) account for all funds of the client on hand or previously dealt with and refund any remuneration not earned during the employment;¹⁰
 - (d) promptly render an account for outstanding fees and disbursements;¹¹
 - (e) cooperate with the successor lawyer for the purposes outlined in commentary.¹²

The obligation in clause (a) to deliver papers and property is subject to the lawyer's right of lien referred to in commentary

11 below. In the event of conflicting claims to such papers and property, the lawyer should make every effort to have the claimants settle the dispute.¹³

9. Cooperation with the successor lawyer will normally include providing any memoranda of fact and law that have been prepared by the lawyer in connection with the matter, but confidential information not clearly related to the matter should not be divulged without the express consent of the client.¹⁴

10. The lawyer acting for several clients in a case or matter who ceases to act for one or more of them should cooperate with the successor lawyer or lawyers to the extent permitted by this Code, and should seek to avoid any unseemly rivalry, whether real or apparent.¹⁵

Lien for Unpaid Fees

11. Where upon the discharge or withdrawal of the lawyer the question of a right of lien for unpaid fees and disbursements arises, the lawyer should have due regard to the effect of its enforcement upon the client's position. Generally speaking, the lawyer should not enforce such a lien if the result would be to prejudice materially the client's position in any uncompleted matter.¹⁶

Duty of Successor Lawyer

12. Before accepting employment, the successor lawyer should be satisfied that the former lawyer approves, or has withdrawn or been discharged by the client. It is quite proper for the successor lawyer to urge the client to settle or take reasonable steps toward settling or securing any account owed to the former lawyer, especially if the latter withdrew for good cause or was capriciously discharged. But if a trial or hearing is in progress or imminent, or if the client would otherwise be

prejudiced, the existence of an outstanding account should not be allowed to interfere with the successor lawyer acting for the client.¹⁷

Dissolution of Law Firm

13. When a law firm is dissolved, this will usually result in the termination of the lawyer-client relationship as between a particular client and one or more of the lawyers involved. In such cases, most clients will prefer to retain the services of the lawyer whom they regarded as being in charge of their business prior to the dissolution. However, the final decision rests in each case with the client, and the lawyers who are no longer retained by the client should act in accordance with the principles and commentary here set out.¹⁸

¹ Alta. 14-S.O.P.; ABA-MC EC 2-32, DR 2-110(A), (C); N.B. 10-R; N.S. R-11; Ont. 2.09(1); Que. 3.03.04. For cases, see 4 Can. Abr. (2d) under “Barristers and Solicitors: Termination of Relationship,” paras. 101-02 and supplements.

² N.B. 10-C.1(a); N.S. R-11 Guiding Principle 1; Ont. 2.09(1) Commentary.

³ ABA-MC EC 2-32, DR 2-110(A); N.B. 10-C.1(b)(i),(ii); N.S. R-11 Guiding Principle 2; Ont. 2.09(8). Provincial Rules of Court provide for the giving of notice of change of solicitors and for the bringing of motions for leave to withdraw. For cases, see 4 Can. Abr. (2d) under “Barristers and Solicitors: Change of Solicitors,” paras. 342-58 and supplements. In legal aid cases, provincial regulations may also require notice to the plan administrators; see, e.g., in R.R.O. 1990, Reg. 710, s. 63(1) (a).

⁴ N.B. 10-C.1(b)(iii); N.S. R-11 Guiding Principle 3.

⁵ Alta. 14-R.1; ABA-MC DR 2-110(B); ABA-MR 1.16(a); B.C. 10(1); N.B. 10-C. 3; N.S. C-11.1, C-11.2; Ont. 2.09(7); Que. 3.02.09.

⁶ Alta. 14-R.2; ABA-MR 1.16(b); B.C. 10(2); N.B. 10-C.4(a); N.S. C-11.3 to C-11.5; Ont. 2.09(2); Que. 3.03.04(b). Failure to instruct counsel constitutes repudiation which counsel could accept and terminate the employment.

⁷ B.C. 10(6), 10(7); N.B. 10-C.4(vi), 4(b); N.S. C-11.6; Ont. 2.09(3).

⁸ ABA-MC DR 2-110(A)(2); N.B. 10-C.2(b); N.S. C-11.7, 11.8; Ont. 2.09(1) Commentary.

⁹ B.C. 10(8)(d)(ii).

¹⁰ B.C. 10(8)(d)(i).

¹¹ Alta. 14-R.4.

¹² Alta. 14-R.3; B.C. 10(8)(e).

¹³ ABA-MC EC 2-32; ABA-MR 1.16(d); N.B. 10-C.5(a); N.S. C-11.9, 11.10; Ont. 2.09(9).

¹⁴ N.B. 10-C.5(a); N.S. C-11.11.

¹⁵ N.B. 10-C.5(b); N.S. C-11.12; Ont. 2.09(9) Commentary.

¹⁶ Alta. 13-R.9; N.B. 10-C.6; N.S. C-11.13; Ont. 2.09(9) Commentary.

¹⁷ Alta. 14-R.5; N.B. 10-C.7; N.S. C-1.14, 11.15; Ont. 2.09(10).

¹⁸ N.B. 10-C.8; N.S. C-11.16, 11.17; Ont. 2.09(7) Commentary.