NOVEMBER 2017

How Should You Handle a Difficult Client?

Most lawyers encounter difficult clients at some time during their careers. A lawyer is not required to withdraw from representing a client just because the client is difficult. Model Rule 1.16 sets forth three situations in which a lawyer is required to withdraw: when the representation will result in a violation of the rules of professional conduct or other law; when the lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client; and when the client discharges the lawyer.

The reasons for which a lawyer is permitted to withdraw are broad and usually include “other good cause.” If the client is difficult to the point of being uncooperative, or making it difficult for you to discharge your duties as an attorney, you probably have “good cause” to withdraw.

Once you have determined that withdrawal is desirable, you should review the ethical rules of your jurisdiction regarding withdrawal. Model Rule 1.16(d) states that when a lawyer withdraws, he must take steps to the extent reasonably practicable to protect the client’s interests, such as giving reasonable notice to the client, allowing time for the employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fees that has not been earned. While some states allow a lawyer to assert a retaining lien on the client’s file, others states, such as California, require that the file be turned over to the client upon request, whether the client has fully paid for the legal services or not.

Under Model Rule 1.16, an attorney representing a client before a tribunal must obtain permission from the tribunal to withdraw. An attorney who files an appearance on behalf of a client must continue to represent that client in that case until the court grants withdrawal.

When withdrawing from representation of a client, serve written notice of withdrawal by certified mail or personal service on the client, even in non-litigated situations. Send a “disengagement” letter to the client advising the client that the representation has ended and that the lawyer will take no further action on the client’s behalf. Such a letter serves to document the discharge of the lawyer’s duty in the event of a dispute, but also signals to the client, in concrete terms, that the attorney-client relationship has ended. It will undoubtedly be the key evidence in a malpractice case, and may prevent the initiation of suit.