Document a Client’s Direction to Act Contrary to Lawyer’s Advice

ABA Model Rule 1.2(a) and similar rules adopted in many states require that a lawyer abide by a client’s decisions concerning the objectives of representation and consult with the client as to the means by which they are to be pursued. The Rule specifically provides that a lawyer must abide by a client’s decision whether to settle a matter and, in a criminal case, as to a plea to be entered, whether to waive jury trial and whether the client will testify. One kind of client with a high risk of making a malpractice claim is one who does not follow the lawyer’s advice, but instead, insists on taking a contrary course of action. The risk of a claim arises from the representation of such a client because, if the client is dissatisfied with the outcome, the client will likely blame the lawyer. The lawyer should consider withdrawing from the representation of such a client based on the client’s refusal to follow the lawyer’s advice. If the lawyer continues to represent the client, then the lawyer should, at minimum, prepare for the client’s possible claim by having the client acknowledge in writing that the client chose to act contrary to the lawyer’s advice, after having been advised of the potential adverse consequences of following such a course of action. This acknowledgement should specifically recite the advice given by the lawyer that was rejected by the client, and specifically reiterate the direction given to the lawyer by the client.