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Legal Ethics

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For Motions to Withdraw, Client Confidentiality Reigns Supreme

The American Bar Association published its Formal Opinion No. 519, which addresses how attorneys seeking to withdraw from a representation should proceed amid possible tension with the client's interest in keeping information related to the representation confidential. *Hint: the client's interest always comes first.* ABA Comm. on Ethics & Pro. Resp., Formal Op. 519 (2025).

As set forth in Illinois Rule of Professional Conduct ("RPC") 1.16, there are two types of grounds for requesting to withdraw from representing a client: permissive and mandatory. Ill. R. Prof'l Conduct r. 1.16 (2010). Withdrawing is *permissive* under a variety of circumstances, such as a client being uncooperative, the existence of a fundamental disagreement over strategy, or the client's non-payment of fees. *Id.* The attorney may also show grounds for permissive withdrawal by demonstrating there is no prejudice to the client or by otherwise showing good cause. *Id.*

Withdrawing is *mandatory* under more serious circumstances – including when (1) the representation will result in violation of the Rules of Professional Conduct or other law; (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or (3) the lawyer is discharged. *Id.*

In the more serious situations falling under prong (1) for mandatory withdrawal, especially where the problem relates to the client's misconduct, the client may not want the attorney filing the motion to disclose confidential information (*i.e.*, "information related to the representation of the client" per RPC 1.6). Indeed, the client may not want the attorney withdrawing at all. These situations may include: where a client repeatedly breaches the fee agreement, where a conflict of interest arises relating to the representation, or where a client plans to commit perjury or to offer false evidence on direct examination by the attorney.

What should the attorney do in these situations? Below are some guideposts based on the Formal Opinion and related law.

Less is More

This is the conventional wisdom for seeking a court's permission to withdraw. Say as little as possible, particularly in the initial written motion. The Formal Opinion endorsed this approach, commenting that a motion to withdraw arising from a client's unpaid legal fees might start with "a formulaic reference to 'professional considerations.'" ABA Comm. on Ethics & Pro. Resp., Formal Op. 519 (2025).

Inform the Client; Ask for Consent to Disclose Facts Relating to the Representation

Subject to some limited exceptions, RPC 1.6 provides that an attorney shall not disclose information related to the representation without the client's informed consent. Ill. R. Prof'l Conduct r. 1.16 (2010). The duty to communicate with

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the client about all material aspects of the case is unchanged during the pendency of the attorney's motion to withdraw. This means the attorney must discuss with the client, among other things: what the attorney will state in the motion to withdraw; whether disclosure of confidential information (*i.e.,* information relating to the representation) may be needed to obtain the court's permission to withdraw; the manner in which any such disclosures would be made; and how making the disclosures may affect the client's interest.

When in Doubt, Play it Out

What happens when the client withholds consent, the court does not accept a mere "professional considerations" recitation (see above), and it informs the attorney that absent some substantiation as to the underlying facts, it will deny the motion to withdraw?

There is no guarantee that an attorney will be permitted to disclose all material information to the court in this situation, much less obtain the court's permission to withdraw, just because there happens to be compelling reasons for withdrawing. The court may ultimately order an attorney to continue representing the client in this situation, *notwithstanding that the grounds for withdrawing were mandatory*.

In that case, the attorney must continue representing the client (which does not violate the ethics rules). The Formal Opinion observed that even after a motion is denied for insufficient information, the attorney should be able to keep representing the client, while managing the problems that may have constituted grounds for mandatory withdrawal. ABA Comm. on Ethics & Pro. Resp., Formal Op. 519 (2025). With respect to instances where a client insists on using the attorney's services in furtherance of unlawful conduct, the Formal Opinion opined that "a lawyer whose motion is denied can ordinarily continue the representation without assisting in the client's intended crime or fraud." *Id.*

There are some tried-and-true techniques available for practitioners in ethically challenging circumstances. For example, a trial attorney may ask for a narrative response on direct examination if reasonably necessary to avoid acting in furtherance of a client's false testimony. This is consistent with RPC 3.3(a)'s provision that an attorney may refuse to offer false evidence. (Separately, RPC 3.3(a) may *require* the attorney to make certain disclosures to remedy the impact of a *past instance* in which the client has offered false evidence.) Ill. R. Prof'l Conduct r. 3.3 (2010).

Consider with Caution: RPC 1.6 Exceptions; Local Court Procedures

As noted above, there are a handful of exceptions which are set forth in RPC 1.6 to the requirement of that an attorney disclosing information relating to the representation obtain the client's informed consent. Consider these exceptions prudently in the context of seeking to withdraw.

The exceptions set forth in this rule are all permissive, meaning that they denote circumstances which *permit* an attorney to disclose confidential information without consent, with one exception: paragraph (c) provides that an attorney *shall* reveal such information "to the extent the lawyer reasonably believes necessary to prevent reasonably certain death or substantial bodily harm." Ill. R. Prof'l Conduct r. 1.16 (2010).

As another threshold note, the exception contained in paragraph (a) of this rule for disclosures "impliedly authorized to carry out the representation" will not apply when the purpose of a disclosure is to support a motion to withdraw. *Id.*

As for the rest of the exceptions in RPC, which are set forth in paragraph (b), you may consider these to provide support for a request to withdraw, but again, do so with caution and restraint. The best practice is to not put an unauthorized disclosure in a written motion, and to disclose to the court only after you can show that it is clearly within

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an exception and that you have exhausted reasonable efforts to obviate a need to disclose (*e.g.,* by advising the client to refrain from conduct triggering the exception).

One paragraph (b) exception to be mindful of is for disclosures which "the lawyer reasonably believes necessary … (6) to comply with other law *or a court order*." (Emphasis added). If the court reviewing a motion to withdraw orders you to disclose further information, you may do so. Even then, you should aim to do it in a way that minimizes the possibility of prejudice to the client—example, by *not* putting such information in a public filing. *Id.*

On a related note, some courts have adopted procedures such as *in camera* review for motions to withdraw, which reduce the risk of prejudice arising from a disclosure of confidential information. Do not presume that the use of such procedures means that the requirement of client consent has been scaled back. Indeed, some state courts have concluded that even *in camera* disclosures without informed client consent can violate the ethics rules.

You May Seek Legal Advice on Professional Responsibility Concerns Related to the Representation of a Client

Disclosing information relating to the representation of a client *to secure legal advice about your compliance with the ethics rules* is absolutely permitted. *See* Model Rules of Prof'l Conduct r. 1.6(b)(4) (Am. Bar Ass'n 2024). Be sure to maintain the attorney-client privilege for such communications, and do not bill your client for them.

It should be no surprise that the rules contemplate that an attorney's interest in ending a problematic representation should yield to the client's interest in keeping the facts of its case confidential. This reflects the fiduciary duties that attorneys owe to their clients, which include loyalty, full disclosure of material facts, and obedience to the client's lawful instructions. The above framework also reflects the system's dependence on the ability of attorneys to self-regulate, and to distinguish between cases within the general rule requiring informed consent and those truly exceptional scenarios which may require a disclosure to be made unilaterally to the court.

About the Author

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