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What Can Lawyers Say in Motions to Withdraw?

Introduction

The requirements for withdrawing from a client's representation may vary significantly depending on a lawyer's practice. For lawyers with counseling and transactional practices who decide to withdraw from clients' representations for any of the reasons listed in Rule 1.16 of the Model Rules of Professional Conduct, the process is simple. In most instances, the lawyer need only communicate with the client and take care of the ministerial tasks that accompany the termination of a client relationship.[1]

Trial lawyers are less fortunate. They must obtain the court's permission to withdraw even when a valid basis for withdrawal exists. Some courts have local rules strictly regulating lawyers' withdrawal. In any event, the decision to grant a motion to withdraw is within the court's discretion. A court may deny a lawyer's motion to withdraw even where the lawyer has grounds to withdraw under Model Rule 1.16.[2]

Persuading a court to permit withdrawal requires lawyers to balance their responsibility to provide the court with a reasonable explanation for their withdrawal with their duty of confidentiality. This is not necessarily easy. Under most states' versions of Model Rule 1.6(a), lawyers generally must protect as confidential all information related to clients' representations.[3] Potentially complicating withdrawal in some cases, courts narrowly construe the exceptions to lawyers' duty of confidentiality.[4] As a result, lawyers frequently are prevented from sharing with courts essential facts or explaining key circumstances that justify their withdrawal from representations.

Trial lawyers who do not appreciate their confidentiality obligations when withdrawing from clients' representations risk professional discipline. A lawyer saying too much in a motion to withdraw is a recurring professional responsibility issue.[5] So, what *can* lawyers say about their motives in motions to withdraw?

Lawyers must balance justifying withdrawal with their duty of confidentiality.

1 Lawyers must, however, ensure that when voluntarily ending a client relationship, they do their best to avoid a "material adverse effect" on the client's interests. Model Rules of Pro. Conduct r. 1.16(b)(1) (Am. Bar Ass'n 2025) [hereinafter Model Rules]; *see also* ABA Comm. on Ethics & Pro. Resp., Formal Op. 516 (2025) (discussing material adverse effects that may prevent voluntary withdrawal). *But see Huffer v. RR Nye, LLC*, 2023 WL 12057080, at *3 (Colo. App. Oct. 12, 2023) ("But even when withdrawal will adversely affect a client's interests, it may be appropriate (and even required) if good cause exists.").

2 *See Rastelli Partners, LLC v. Baker*, 2024 WL 1913084, at *1 (D.N.J. Mar. 6, 2024) ("[A] court may refuse to permit an attorney to withdraw despite a showing of good cause.").

3 *See* Model Rules r. 1.6(a) ("A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).").

4 *See In re Bryan*, 61 P.3d 641, 656 (Kan. 2003) (stating that lawyers' ethical duty of confidentiality is "interpreted broadly, with the exceptions being few and narrowly limited").

5 *See, e.g., People v. Waters*, 438 P.3d 753, 761 (Colo. 2019) (disciplining a lawyer who revealed client confidences out of frustration); *In re Johnson*, 298 A.3d 294, 314 (D.C. 2023) (disciplining the lawyer for filing a motion to withdraw in which she revealed circumstances about the client that led her to inform him that she could no longer represent him); *In re Ponds*, 876 A.2d 636, 637 (D.C. 2005) (censuring a lawyer for disclosing confidential information in a motion to withdraw); *In re Gonzalez*, 773 A.2d 1026, 1029–32 (D.C. 2001) (admonishing a lawyer who revealed that his clients had stopped paying, failed to cooperate in preparing for trial, missed several appointments, and misrepresented facts); *Mohon v. Ky. Bar Ass'n*, 638 S.W.3d 417, 422, 429 (Ky. 2022) (suspending the lawyer in part for unspecified disclosures in a motion to withdraw); *Att'y Grievance Comm'n of Md. v. Smith-Scott*, 230 A.3d 30, 69 (Md. 2020) (finding the lawyer violated her duty of confidentiality when she attached email exchanges with the client to support withdrawal); *Cleveland Metro. Bar Ass'n v. Heben*, 81 N.E.3d 469, 471–72 (Ohio 2017) (disciplining a lawyer who revealed attorney-client communications about the scope of the representation, accused the client of failing to pay his fees, and disclosed legal advice he had provided about the client's potentially illegal conduct); *Law. Disciplinary Bd. v. Farber*, 488 S.E.2d 460, 466 (W. Va. 1997) (suspending a lawyer who attached an affidavit to a motion to withdraw accusing the client of improper conduct); *Bd. of Pro. Resp., Wyo. State Bar v. Austin*, 538 P.3d 653, 657, 660 (Wyo. 2023) (suspending the lawyer who stated in her motion that the client did not cooperate in discovery, did not return telephone calls, missed appointments, "and otherwise [failed to] comply with requirements for the case to go forward").

The Withdrawal Framework

Absent a client's informed consent or an available exception to confidentiality under Model Rule 1.6(b), a lawyer's motion to withdraw and supporting memorandum or argument should not disclose underlying facts.[6] This principle generally holds true even when the lawyer believes the client has engaged in some form of misconduct potentially affecting the representation, or when the client insists on pursuing a course of action that the lawyer considers grossly unwise or morally repugnant.

More broadly, lawyers should say no more than is necessary to accomplish withdrawal. It will normally be sufficient for a lawyer to (1) cite ethics rules that warrant withdrawal (such as the applicable subparagraph of Model Rule 1.16); (2) state that professional or ethical considerations require withdrawal; or (3) assert there has been an irreconcilable breakdown in the attorney-client relationship preventing the lawyer's continued representation. Courts should grant motions to withdraw grounded in rules of professional conduct.[7] Numerous professional authorities endorse the second and third options.[8]

In some cases, however, a court may not be satisfied with anodyne recitals and instead insist that the lawyer provide factual support for withdrawal. This could occur, for instance, where a lawyer moves to withdraw close to trial, the lawyer's withdrawal will otherwise disrupt the litigation or significantly impair opposing parties' interests, or the litigation is marred by "a history of dilatory tactics."[9] A court might also request more information if the client opposes the lawyer's withdrawal.[10]

If lawyers cannot offer supporting facts without violating their duty of confidentiality under Model Rule 1.6, they should consider making a final attempt to persuade the court to reconsider its position and accept their asserted grounds for withdrawal. If that effort fails, the lawyer's next step is to request an in camera proceeding or offer to submit relevant information for in camera review. In camera review has the benefit of shielding the lawyer's reasoning and related facts from the adversary. If the court will still not relent, the lawyer should request permission to file any documents under seal, which will at least limit public access to the information. In *Decker v. Zonic*,[11] an Arizona federal court combined in camera review with filing under seal to ascertain the specific reasons for the lawyer's motion to withdraw without his client's apparent consent. As the court explained, "[b]y requiring Counsel to submit an *ex parte* affidavit under seal in support of the withdrawal motion and allowing Plaintiff the opportunity to respond (again, *ex parte* and under seal), the Court can gain the information it needs to appropriately balance the withdrawal factors while ensuring that no communications assertedly protected by attorney-client privilege are disclosed to the public or to Defendants."[12]

When a court explicitly directs a lawyer to make further disclosures to justify withdrawal, the court order exception to confidentiality comes into play.[13] Lawyers must appreciate, however, that a court's mere statement that leave to withdraw will be denied without more information is insufficient to trigger this exception.[14] Such commentary by a court simply does not qualify as an "order." Furthermore, even when the court order exception to the duty of confidentiality applies, the lawyer still must limit any disclosures of client information to those necessary to comply with the order and accomplish withdrawal.

Withdrawing for Nonpayment of Fees

Probably the most common reason for lawyers' withdrawal from representations is clients' nonpayment of fees. Rules of professional conduct certainly permit lawyers to withdraw for nonpayment of their fees.[15] There is also ample case law recognizing lawyers' ability to withdraw from clients' representations for nonpayment of fees so long as the client is not prejudiced by the timing of withdrawal or other case-specific factors.[16] As the Seventh Circuit once observed in holding that a law firm should be allowed to withdraw from a case when it was owed significant past due fees and faced the prospect of uncompensated services going forward,

6 *See, e.g.*, NY Eth. Op. 1214, 2021 WL 197086, at *3 (N.Y. State Bar Ass'n, Comm. on Pro. Ethics 2021) (advising that a lawyer may seek to withdraw from a representation if the client persists in making frivolous arguments but cautioning the lawyer not to reveal confidential information unless an exception to the duty of confidentiality applies).

7 *See Fox v. Makin*, 2024 WL 5284017, at *2 (D. Me. Dec. 18, 2024).

8 *See* ABA Comm. on Ethics & Pro. Resp., Formal Op. 476, at 9 (2016) [hereinafter ABA Formal Op. 476]; Ariz. Eth. Op. 09-02, at 4 (State Bar of Ariz. 2009); CA Eth. Op. 2015-192, 2015 WL 1308145, at *10 (Cal. State Bar, Comm. on Pro. Resp. & Conduct 2015); MI Eth. Op. RI-387, 2023 WL 3611925, at *2 (State Bar of Mich., Comm. on Pro. & Jud. Ethics 2023); NY Eth. Op. 1057, 2015 WL 4592234, at *3 (N.Y. State Bar Ass'n, Comm. Pro. Ethics 2015); OR Eth. Op. 2011-185, 2011 WL 11741926, at *2 (Or. State Bar Ass'n Bd. of Governors 2011); Phila. Eth. Op. 2009-09, 2009 WL 6544098, at *4 (Phila. Bar Ass'n, Pro. Guidance Comm. 2009).

9 NY Eth. Op. 1057, *supra* note 8, at *3.

10 MI Eth. Op. RI-387, *supra* note 8, at *2.

11 2023 WL 7002678 (D. Ariz. Oct. 24, 2023).

12 *Id.* at *2.

13 *See* Model Rules r. 1.6(b)(6) ("A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary . . . to comply with other law or a court order[.]").

14 ABA Formal Op. 476, *supra* note 8, at 9 n.20; NY Eth Op. 1057, *supra* note 8, at *4.

15 *See* Model Rules r. 1.16(b)(5) (permitting withdrawal if "the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled"); *id.* r. 1.16(b)(6) (allowing withdrawal if "the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client"); *id.* r. 1.16 cmt. 8 (stating that a lawyer may withdraw if "the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs").

16 *See, e.g., Brandon v. Blech*, 560 F.3d 536, 537–39 (6th Cir. 2009) (noting the lack of prejudice due to the timing of the firm's withdrawal); *Capstone Associated Servs., Ltd. v. United States*, 2023 WL 5624712, at *3 (Fed. Cl. Aug. 31, 2023) ("Plaintiff's failure to pay legal fees provides sufficient grounds to grant [the lawyer's] motion to withdraw under the Texas Disciplinary Rules of Professional Conduct (or ABA Model Rules) and relevant caselaw."); *Cal Fresco, LLC v. Nutrition Corp.*, 2025 WL 1235139, at *3 (C.D. Cal. Apr. 18, 2025) ("It is well-established that failure to pay attorney's fees constitutes good cause for withdrawal."); *Bowman v. Prinster*, 384 S.W.3d 365, 370 (Mo. Ct. App. 2012) (quoting *Harms v. Simkin*, 322 S.W.2d 930, 933 (Mo. Ct. App. 1959)); *Neeman v. Smith*, 211 N.Y.S.3d 199, 202 (App. Div. 2024) (citations omitted) ("An attorney may be permitted to withdraw from employment where a client refuses to pay reasonable legal fees."); *In re Daniels*, 138 S.W.3d 31, 35 (Tex. App. 2004) (permitting withdrawal where the clients failed to pay the lawyer's fees and continued representation would impose an unreasonable financial burden on the lawyer); *see also* ABA Formal Op. 476, *supra* note 8, at 4–5 (collecting cases).

"[l]itigants have no right to free legal aid in civil suits."[17] Of course, when withdrawing for nonpayment of fees or expenses, as when withdrawing in other situations, the lawyer should still attempt to minimize any potential harm or prejudice to the client along with balancing confidentiality.

Lawyers should consider two steps to improve their chances of being allowed to withdraw for nonpayment of their fees. First, they might include in their engagement letters a statement to the effect that if they seek to withdraw for nonpayment, the client will not oppose any related motion. Courts understandably review motions to withdraw to which clients consent – or at least do not oppose – in a more accommodating light.

Second, lawyers can calendar internal "trip wires" at intervals in advance of any scheduled trial date by which the client's account must be brought current for the lawyer to continue the representation. Any final deadline for full payment of the lawyer's or law firm's fees up to that point should be far enough in advance of trial that the client will not be able to reasonably claim a material adverse effect due to the lawyer's withdrawal. Timing may vary depending on custom and practice in the jurisdiction and the nature of the case, but any deadline less than 90 to 120 days before trial is likely cutting things too close.

A lawyer withdrawing for nonpayment should still try to minimize any potential prejudice to the client.

17 *Fid. Nat'l Title Ins. Co. of N.Y. v. Intercounty Nat'l Title Ins. Co.*, 310 F.3d 537, 540 (7th Cir. 2002).

Conclusion

A lawyer moving to withdraw from a client's representation in litigation should avoid saying more than is necessary to accomplish the lawyer's goal. Experienced judges will typically recognize the professional responsibility implications of a lawyer's simple citation to an applicable rule of professional conduct, a lawyer's assertion that professional considerations require withdrawal, or a lawyer's statement that an irreconcilable breakdown in the attorney-client relationship prevents continued representation.[18] Absent client consent, lawyers moving to withdraw must take reasonable steps to avoid revealing confidential client information. Lawyers must also give clients reasonable advance notice of their intention to withdraw and attempt to accomplish withdrawal in a manner that minimizes potential prejudice to the client. In sum, a lawyer's withdrawal must be precisely executed – stating only what is necessary, preserving confidentiality, and ensuring a smooth transition – to uphold both the lawyer's ethical obligations and the integrity of the client relationship.

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18 *See, e.g., McRae v. DirectConnectOnline, Inc.*, 2025 WL 1370020, at *2 (S.D. Miss. Apr. 9, 2025) (recognizing that the lawyers could only "provide limited information at the hearing [on their motion to withdraw], noting their ethical obligation under Rule 1.6 not to disclose information subject to attorney-client privilege," and stating that "[c]ounsel should not be required to violate Rule 1.6 when complying with Rule 1.16(a)'s mandatory withdrawal requirement").

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