

Ethical and Procedural Withdrawal Requirements

by
Kenneth L. Jorgensen, First Assistant Director
Minnesota Office of Lawyers Professional Responsibility

Reprinted from *Minnesota Lawyer* (November 4, 2002)

Terminating the representation of a client in a matter pending before a tribunal often triggers the ethical obligation to obtain court permission to withdraw.

This obligation exists regardless of whether the client has fired the lawyer, other counsel is assuming the representation as substitute counsel or the lawyer is seeking to withdraw. See Rule 1.16(c), Minnesota Rules of Professional Conduct (MRPC).

The necessity of court permission varies from court to court and even within certain courts depending upon the nature of the proceeding (e.g., civil or criminal). Ethically, withdrawing from representation, as outlined in this article, can only be accomplished by compliance with the applicable procedure or practice rules of the tribunal before which the lawyer is practicing.

Federal court

In federal District Court in Minnesota, Local Rule 83.7 governs both civil and criminal proceedings. This rule does not require court authorization if the lawyer's notice of withdrawal is accompanied by a substitution of counsel and takes place 90 days or more in advance of a civil trial, or 30 days or more in advance of a criminal trial – provided the substitution of counsel does not “delay the trial or other progress of the case.”

Without a substitution of counsel, however, withdrawal is only permitted upon a showing of “good cause” in a formal motion to the court.

Bankruptcy Court

The Minnesota Bankruptcy Court handles withdrawal of counsel in a similar fashion. See Local Rule 9010-3(e), Minnesota Bankruptcy Court Rules.

Where substitution of counsel will occur, court approval for withdrawal is not required unless the debtor's employment of the withdrawing lawyer was subject to Bankruptcy Court approval. Where withdrawal will leave the debtor without counsel, lawyers must file a written motion to obtain permission to withdraw.

Immigration Court

After a notice of appearance has been filed with the Immigration Court, withdrawal and/or substitution of counsel is permitted only upon written or oral motion to the immigration judge. See 8 CFR Part 3, section 3.17.

State criminal matters

Minnesota state courts impose different standards for civil and criminal proceedings. Rule 703 of the Rules of Criminal Procedure says that once a certificate of representation has been filed, withdrawal from criminal cases where there is no substitution of counsel requires a written motion and order of the court. The rule prohibits withdrawal motions within 10 days of trial. Moreover, even where substitution of counsel accompanies the withdrawal, ex parte court approval is necessary.

State civil matters

Withdrawal from state court civil, appellate and administrative proceedings is treated similarly, albeit under different rules. Although none of these proceedings require court permission, withdrawal is only effective upon serving all parties and the tribunal with notice of the withdrawal. See e.g., Rule 105, General Rules of Practice; Rule 143.05 (subd. 2), Rules of Civil Appellate Procedure; and Rule 1400.5700, Minnesota Code of Agency Regulations.

Each of these rules requires the withdrawal notice to include the client's address and telephone number and cautions that withdrawal does not create a right to continue already scheduled trials or hearings.

Noncompliance consequences

Despite the absence of a court approval requirement, these "notice" type of withdrawal rules can still serve as a basis for discipline. Lawyers have been disciplined for failing to provide the required notice when the failure to do so has resulted in prejudice to the former client or disruption of court procedures or calendars.

Most recently, a lawyer was fired by his client in a pending District Court matter. The lawyer promptly wrote the client, confirming his termination and making the file available to the client. However, because the lawyer failed to notify the court of his termination (i.e., withdrawal), the court administrator continued to send case notices to the lawyer's office.

Thereafter, the client filed an ethics complaint against the lawyer when the court continued the client's motion because it was unaware of the lawyer's withdrawal nearly two months earlier. The lawyer

was privately disciplined under MRPC Rule 1.16(d) for failing to “take steps reasonably practicable to protect a client’s interests” upon termination of representation.

Lawyers typically focus upon the basis or justification for withdrawal in analyzing their professional duties and obligations. Nevertheless, ethically withdrawing from litigation matters requires not only a proper basis or reason for withdrawal (Rule 1.16(a) and (b)), but also compliance with the procedural rules of the tribunal before which the litigation is pending. Failure to heed these requirements can result not only in professional discipline, but also court sanctions.