

1 **Rule 1.16. Declining or terminating representation.**

2 (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where
3 representation has commenced, shall withdraw from the representation of a client if:

4 (1) the representation will result in violation of the rules of professional conduct or
5 other law;

6 (2) the lawyer's physical or mental condition materially impairs the lawyer's ability
7 to represent the client; or

8 (3) the lawyer is discharged.

9 (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client
10 if:

11 (1) withdrawal can be accomplished without material adverse effect on the interests
12 of the client;

13 (2) the client persists in a course of action involving the lawyer's services that the
14 lawyer reasonably believes is criminal or fraudulent;

15 (3) the client has used the lawyer's services to perpetrate a crime or fraud;

16 (4) the client insists upon taking action that the lawyer considers repugnant or with
17 which the lawyer has a fundamental disagreement;

18 (5) the client fails substantially to fulfill an obligation to the lawyer regarding the
19 lawyer's services and has been given reasonable warning that the lawyer will
20 withdraw unless the obligation is fulfilled;

21 (6) the representation will result in an unreasonable financial burden on the lawyer
22 or has been rendered unreasonably difficult by the client; or

23 (7) other good cause for withdrawal exists.

24 (c) A lawyer must comply with applicable law requiring notice to or permission of a
25 tribunal when terminating a representation. When ordered to do so by a tribunal, a
26 lawyer shall continue representation notwithstanding good cause for terminating the
27 representation.

28 (d) Upon termination of representation, a lawyer shall take steps to the extent
29 reasonably practicable to protect a client's interests, such as giving reasonable notice to
30 the client, allowing time for employment of other counsel, surrendering papers and
31 property to which the client is entitled and refunding any advance payment of fee or
32 expense that has not been earned or incurred. The lawyer must provide, upon request,

33 the client's file to the client. The lawyer may reproduce and retain copies of the client
34 file at the lawyer's expense.

35 (e) In the event of a conviction or a guilty plea in a criminal case, a lawyer shall take
36 steps to the extent reasonably practicable to protect a client's interests in a possible
37 appeal, including informing the client of the right to take an appeal, the time within
38 which any appeal must be filed, and the potential grounds for appeal; and filing a
39 notice of appeal if requested.

40 **Comment**

41 [1] A lawyer should not accept representation in a matter unless it can be performed
42 competently, promptly, without improper conflict of interest and to completion.
43 Ordinarily, a representation in a matter is completed when the agreed upon assistance
44 has been concluded. See Rules 1.2(c) and 6.5. See also Rule 1.3, Comment 4.

45 **Mandatory Withdrawal**

46 [2] A lawyer ordinarily must decline or withdraw from representation if the client
47 demands that the lawyer engage in conduct that is illegal or violates the rules of
48 professional conduct or other law. The lawyer is not obliged to decline or withdraw
49 simply because the client suggests such a course of conduct; a client may make such a
50 suggestion in the hope that a lawyer will not be constrained by a professional
51 obligation.

52 [3] When a lawyer has been appointed to represent a client, withdrawal ordinarily
53 requires approval of the appointing authority. See also Rule 6.2. Similarly, court
54 approval or notice to the court is often required by applicable law before a lawyer
55 withdraws from pending litigation. Difficulty may be encountered if withdrawal is
56 based on the client's demand that the lawyer engage in unprofessional conduct. The
57 court may request an explanation for the withdrawal, while the lawyer may be bound
58 to keep confidential the facts that would constitute such an explanation. The lawyer's
59 statement that professional considerations require termination of the representation
60 ordinarily should be accepted as sufficient. Lawyers should be mindful of their
61 obligations to both clients and the court under Rules 1.6 and 3.3.

62 **Discharge**

63 [4] A client has a right to discharge a lawyer at any time, with or without cause, subject
64 to liability for payment for the lawyer's services. Where future dispute about the
65 withdrawal may be anticipated, it may be advisable to prepare a written statement
66 reciting the circumstances.

67 [5] Whether a client can discharge appointed counsel may depend on applicable law. A
68 client seeking to do so should be given a full explanation of the consequences. These
69 consequences may include a decision by the appointing authority that appointment of
70 successor counsel is unjustified, thus requiring ~~self-representation~~self-representation by
71 the client.

72 [6] If the client has severely diminished capacity, the client may lack the legal capacity
73 to discharge the lawyer, and in any event the discharge may be seriously adverse to the
74 client's interests. The lawyer should make special effort to help the client consider the
75 consequences and may take reasonably necessary protective action as provided in Rule
76 1.14.

77 **Optional Withdrawal**

78 [7] A lawyer may withdraw from representation in some circumstances. The lawyer has
79 the option to withdraw if it can be accomplished without material adverse effect on the
80 client's interests. Withdrawal is also justified if the client persists in a course of action
81 that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not
82 required to be associated with such conduct even if the lawyer does not further it.
83 Withdrawal is also permitted if the lawyer's services were misused in the past even if
84 that would materially prejudice the client. The lawyer may also withdraw where the
85 client insists on taking action that the lawyer considers repugnant or with which the
86 lawyer has a fundamental disagreement.

87 [8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement
88 relating to the representation, such as an agreement concerning fees or court costs or an
89 agreement limiting the objectives of the representation.

90 **Assisting the Client upon Withdrawal**

91 [9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all
92 reasonable steps to mitigate the consequences to the client. See Rule 1.15. Upon
93 termination of representation, a lawyer shall provide, upon request, the client's file to
94 the client notwithstanding any other law, including attorney lien laws. It is impossible
95 to set forth one ~~all-encompassing~~all-encompassing definition of what constitutes the
96 client file. However, the client file generally would include the following: all papers and
97 property the client provides to the lawyer; litigation materials such as pleadings,
98 motions, discovery, and legal memoranda; all correspondence; depositions; expert
99 opinions; business records; exhibits or potential evidence; and witness statements. The
100 client file generally would not include the following: the lawyer's work product such as
101 recorded mental impressions; research notes; legal theories; internal memoranda; and
102 unfiled pleadings. The Utah rule differs from the ABA Model Rule in requiring that

103 papers and property considered to be part of the client's file be returned to the client
104 notwithstanding any other laws or fees or expenses owing to the lawyer.

105 **Assisting the Client After Criminal Plea or Conviction**

106 [10] Paragraph (e) highlights that there are some critical decisions regarding a client's
107 rights of appeal that occur soon after a conviction or guilty plea but before the
108 termination of trial-stage representation. The trial lawyer should take whatever steps
109 are necessary to protect the client's rights of appeal, including filing a timely notice of
110 appeal with the trial court if requested by the client, even if counsel does not expect to
111 continue as counsel on appeal, and requesting the appointment of counsel for appeal if
112 the client is indigent. Consultation regarding the potential grounds for appeal should
113 include advising the client about the meaning of the court's judgment, any preserved
114 issues, and the advantages and disadvantages of an appeal. During consultation and
115 representation, the lawyer should make reasonable efforts to discover the client's
116 wishes. The decision to appeal must be the client's own choice. The obligations under
117 paragraph (e) can be fulfilled by timely ensuring that the client has secured
118 representation for appeal.

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