

## *Irreconcilable Differences: When Can a Lawyer Terminate Representation Without Cause?*

by Keith A. Call

Most of you can probably quit your job – or fire your employees – without cause. You usually wouldn't have to recite any "reason" to resign as a member of a board or association. You can even end your marriage simply by reciting the magic words, "irreconcilable differences."

But what about your client relationships? Risk managers will tell you that "bad clients" pose one of the greatest malpractice risks out there. So how do you dump a client that you simply don't like or that you think poses a future malpractice risk? Can you even do that?

The answer is, "sometimes, but not always." This article will provide some guidance on when and how to fire clients without cause.

### **When You Can Fire Your Client**

The rules for when you "may withdraw" from a representation are found in Utah Rule of Professional Conduct 1.16(b). This rule has seven subparts, including several familiar grounds for terminating a representation "for cause." These grounds include such things as the client's criminal or fraudulent activity, the client's failure to pay or fulfill other obligations to the lawyer, and other similar reasons. Utah R. Prof'l Conduct 1.16(b).

Let's focus in on the provisions that may allow you to withdraw simply because you don't want to continue. The structure of Rule 1.16(b) makes it clear that there are two broad categories of permissive withdrawal: (1) withdrawal without material adverse effect and (2) withdrawal for "good cause" notwithstanding an adverse material effect on the client. Thus, Rule 1.16(b)(1) allows you to terminate your client relationship when "withdrawal can be accomplished without material adverse effect on the interests of the client." There is little authority in Utah (and elsewhere) defining "material adverse effect" in the context of this rule. Generally, adverse effects are less likely to be present early in the lawyer-client relationship. Especially when litigation is involved, the longer you wait to withdraw, the more likely it is to have an adverse effect on your client. If an objective person

would conclude that withdrawal would not have a material effect on your client, you may have found your get out of jail card.

There are other potential ways out of the relationship even if your client may suffer material adverse effects from your withdrawal. Rule 1.16(b)(4) allows you to withdraw if the client insists on taking action that you consider "repugnant," or with which you have a fundamental disagreement. Rule 1.16(b)(6) allows you to withdraw if the representation has been "rendered unreasonably difficult by the client." Rule 1.16(b)(7) allows you to withdraw if "other good cause" exists.

These grounds identified in subsections (4), (6), and (7) are by nature vague and subject to varying interpretations. One court found the representation was "unreasonably difficult" after the client threatened his lawyer with a malpractice action and an ethics complaint and refused to meet with the lawyer. *Njema v. Wells Fargo Bank, N.A.*, 2015 WL 12977504, \*\*3–4 (D. Minn. 2015). The court permitted withdrawal even in the face of significant adverse effects on the client. *Id.* at \*4; *see also In re Admonition Issued in Panel File No. 94-24*, 533 N.W. 2d 852, 853 (Minn. 1995) (noting that it may be in client's best interest to sever relationship if attorney believes client has no confidence in the representation). However, another court denied withdrawal even though the client was "disrespectful and no longer ha[d] confidence" in her attorney. *Cuadra v. Univison Comm'ns, Inc.*, 2012 WL 1150833, \*8 (D.N.J. 2012). The court noted that "more than difficult client interactions" are required. *Id.*

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In short, if your withdrawal will have no material adverse effect on your client, you are probably free to end the relationship. If there is the possibility of a material adverse effect, you need to consider such things as repugnant actions, fundamental disagreements, unreasonable difficulty, and other similar compelling reasons. If any of these conditions exist, it is far easier to pull the plug early in the relationship. The longer you wait to withdraw, the more entrenched you may become.

### The Judge Trump Card

Even if you have great reasons to withdraw from representing your client, the judge may have the last word in a litigation setting. Rule 1.16(b) applies “[e]xcept as stated in paragraph (c).” Paragraph (c) requires a lawyer to continue representing a client whenever a judge orders the lawyer to do so.

### Protecting Client Interests upon Withdrawal

Under all circumstances of withdrawal, regardless of the reason or lack thereof, you must take reasonable steps to protect your clients’ interests. This may include such things as “giving reasonable notice,” “allowing time for employment of other counsel,” and surrendering the client’s file. Utah R. Prof’l Conduct 1.16(d).

### The Lawyer’s Duties to the Justice System

Let’s end with a platitude. (Okay “platitude” has a negative connotation, but please take this seriously.) As lawyers, we have duties beyond our own personal ambition. As one court has stated:

[A]n attorney has certain obligations and duties to a client once representation is undertaken. These obligations do not evaporate because the case becomes more complicated or the work more arduous or the retainer not as profitable as first contemplated or imagined. . . . Attorneys must never lose sight of the fact that “the profession is a branch of the administration of justice and not a mere money-getting trade.” . . . “The lawyer should not throw up the unfinished task to the detriment of his client.”

Kate A. Toomey, *Practice Pointer: When Can a Lawyer End an Attorney-Client Relationship?*, 17 UTAH B.J. 7, 7 (Aug./Sept. 2004) (quoting *Kriegsman v. Kriegsman*, 375 A.2d 1253, 1256 (N.J. Super. 1977) (citations omitted)).

You should temper whatever “right” you have to withdraw with the ethical and moral obligation to serve the system of justice at large. Our judicial system can be complicated. Clients usually need the help of a competent lawyer. Opposing parties and counsel benefit from having competent counsel on the other side. Judges usually benefit from having good lawyers present. We will obtain better outcomes in court and in society as a whole if we are willing to stick things out even when the going gets tough.

*Every case is different. This article should not be construed to state enforceable legal standards or to provide guidance for any particular case. The views expressed in this article are solely those of the author.*