

How to end a representation, ethically



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Sometimes situations arise during the course of a legal representation for which the safest and best decision an attorney can make is to terminate the attorney-client relationship. Knowing how and when to do so may not only prevent further deterioration of the relationship, but it may even help reduce the risk of a bar complaint or legal malpractice claim.

In seeking to end a representation or withdraw as counsel of record, attorneys should be aware that the practical steps of withdrawal usually vary somewhat between litigation and nonlitigation matters. For example, for litigation matters in many jurisdictions, the court is required to approve the withdrawal, subject to satisfaction of various notice and filing requirements. By contrast, in nonlitigation matters, withdrawal may often be achieved by asking for and receiving the client's consent or even by simply terminating the relationship by letter.

No matter the nature of the representation, however, withdrawal implicates attorneys' ethical obligations under the rules of professional conduct. Below are some considerations inherent in ending a troublesome representation.

Terminating the representation

An attorney may withdraw from a representation if doing so can be accomplished "without material adverse effect on the interests of the client." Georgia Rules of Professional Conduct 1.16(b). This is known as permissive withdrawal.

In evaluating whether withdrawal might have a material adverse effect on the client's interests, important factors to consider include the complexity of the matter, whether co-counsel is already involved and whether there are any imminent deadlines that make it difficult for the client to find replacement counsel. For example, terminating a representation days or even weeks before a large and complex commercial real estate closing could have a material adverse effect on the client's interests.

Often, the permissive withdrawal process will be initiated by written correspondence. The letter may contain deadline information, asking for a response from the client by a specific date. The written request for permission to withdraw, coupled with the client's response (or nonresponse), is one of the most-effective tools, if faced with a later dispute regarding the circumstances of withdrawal. If the permission is granted or there is no response, then the next step is to confirm that the attorney will withdraw.

From here, additional steps are required for litigation matters, where the procedure for withdrawal is governed by court rule.

Withdrawing from litigation matters

Once the client's position is known, the next step for litigation matters is to formally withdraw from the representation and the litigation. This involves specific procedures through written notice to the client of the withdrawal. Federal courts usually have their own local procedures.

Preferably, the attorney will have outlined the withdrawal process in the engagement letter and/or fee contract so the notice can be sent consistent with that process. Georgia Uniform Superior Court Rule 4.3(2) outlines some information that must be included in the notice served on the client and filed with the court, including the client's duties to the court and the consequences the client may suffer if the client fails or refuses to meet certain obligations before retaining new counsel.

If the client is merely substituting counsel, the new attorney may file a notice of substitution of counsel with the clerk. This notice usually must contain the case caption and the name, address, phone number and bar number of the new attorney. Then, the new attorney may simply serve a copy of the notice on the former attorney, opposing counsel and the court. If those steps are followed, then typically no further action is required by the former attorney to withdraw from representing the party.

However, if the client is not substituting new counsel, the procedure is a bit more complicated. In accordance with the Georgia Uniform Superior Court Rules, an attorney who wishes to withdraw as counsel must submit a written request to the court for an order permitting the withdrawal. Rule 4.3(1). The request must state that the attorney has given the client written notice of the attorney's intent to withdraw, that 10 days have expired since notice was provided and that either the client has consented or has not objected. The rules provide other guidelines and requirements.

In most circumstances, the court will grant the request for withdrawal in accordance with the rules, unless doing so would, in the judge's discretion, delay the trial or "otherwise interrupt the orderly operation of the court or be manifestly unfair to the client." Rule 4.3.

Georgia's federal courts set forth varying requirements for withdrawing as attorney of record. For example, the U.S. District Court for the Northern District of Georgia requires attorneys to comply with the procedure set forth in Local Rule 83.1(E), while the U.S. District Court for the Southern District of Georgia mandates compliance with Local Rule 83.7. In contrast to the Georgia Uniform Superior Court Rules, these federal courts require the withdrawing attorney to provide the client with 14 days' written notice.

After terminating the representation

The Georgia Rules of Professional Conduct require the attorney to "take steps to the extent reasonably practicable to protect a client's interest" upon termination of a relationship. Rule 1.16(d). Such steps include giving the client "reasonable notice" of the termination, surrendering papers and property to which the client is entitled, and refunding advance payment of fees that have not been earned. Rule 1.16(d).

Documenting the termination of the relationship is helpful, not only because it might help ensure compliance with applicable rules but also because it helps create a clear date on which the attorney-client relationship ended. This can be critical in calculating the applicable statute of limitation for any future claim by the former client.

Terminating an attorney-client relationship can be thorny and even emotional. By being aware of one's ethical obligations, however, an attorney can take steps to terminate the relationship in the least painful way possible.