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WHEN AND HOW SHOULD A LAWYER WITHDRAW AS COUNSEL?

Professionalism & Ethics Committee

Chairs: Julie Sneed - Akerman Senterfitt LLP; Joan Boles - Bay Area Legal Services, Inc.



A typical motion to withdraw as counsel cites irreconcilable differences as the basis for withdrawal. Though irreconcilable differences may be a justification for withdrawal, it is only one of several permissible grounds. *Horan v. O'Connor*, 832 So. 2d 193 (Fla. 4th DCA 2002). Florida Rules of Professional Conduct 4-1.16(b) sets forth five permissible grounds for withdrawing from representation: “(1) withdrawal can be accomplished without material adverse effect on the interests of the client; (2) the client insists on taking action that the lawyer considers repugnant, imprudent, or with which the lawyer has a fundamental disagreement; (3) 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; (4) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or (5) other good cause for withdrawal exists.”

In addition to the permissible grounds for withdrawal, there are several instances in which counsel must withdraw: “(1) the representation will result in a

violation of the Rules of Professional Conduct or law; (2) the lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client; (3) the lawyer is discharged; (4) the client persists in a course of action involving the lawyer’s services that the lawyer reasonably believes is criminal or fraudulent, unless the client agrees to disclose and rectify the crime or fraud; or (5) the client has used the lawyer’s services to perpetrate a crime or fraud, unless the client agrees to disclose and rectify the crime or fraud.” FRPC Rule 4-1.16(a).

Although the court needs sufficient information to determine whether counsel has permissible grounds for withdrawal, the withdrawing attorney must be sensitive to the duty to maintain client confidences as required by FRPC Rule 4-1.6. Generally, the court should not withhold approval unless doing so “would interfere with the efficient and proper functioning of the court.” *Fisher v. State*, 248 So. 2d 479, 486 (Fla. 1979) (noting examples such as attempting to withdraw on the eve of trial or withdrawing pleadings that subject a client to default judgment).



Lawyers must be conscientious not to tarnish the integrity of their clients or otherwise breach the client’s sacred trust.

In cases where the client disputes withdrawal, further details regarding the basis for withdrawal may be needed. However, there is a heightened risk that the lawyer-client relationship may devolve into “an all-out attack by each party on the credibility of the other.” *Borwin v. Molyneaux*, ___ So. 3d ___, 37 Fla. L. Weekly D2641a, Case No. 5D12-2589 (Nov. 9, 2012). Lawyers must be conscientious not to tarnish the integrity of their

clients or otherwise breach the client’s sacred trust. *Florida Bar v. Knowles*, 99 So. 3d 918 (Fla. July 12, 2012) (suspending lawyer for filing disparaging motions to withdraw). In light of cases like *Knowles*, it is not surprising that most motions to

withdraw contain threadbare allegations of “irreconcilable differences” as the sole explanation for withdrawal.



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