

Bad Clients and What to Do about Them

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We zealously represent and pursue clients. We dress up for beauty contests, toil over requests for proposals, and scour the internet—all part of a seemingly endless effort to retain clients. After all, clients can enable you to enhance your legal skills, reputation, and bottom line. But the competitive legal marketplace and our deep-seated desire to land and keep clients can cloud our judgment and ability to identify problem clients. Sometimes a client that looked promising turns out to be unreasonable or fails to pay your bills. You can try to withdraw from the representation, but that requires jumping through a number of ethical and procedural hoops, and even then, the court may not grant your request. Given those risks, careful and vigilant evaluation of clients can prevent problems before and during representation.

If you find yourself with a bad client, the ABA Model Rules discuss when terminating a problematic attorney-client relationship is permissible and how to do it. For example, Rule 1.16(b)(5) allows withdrawal when the client “substantially fails to fulfill an obligation to the lawyer regarding the lawyer’s services,” such as refusing to satisfy an agreement for fees and costs. Rule 1.16(b)(6) also allows termination if the relationship would “result in an unreasonable financial burden... or has been rendered unreasonably difficult by the client.”

If you can withdraw, then your next step is to give reasonable notice of your intent to end the client relationship, including any motions to withdraw. Courts have discretion to deny a motion where withdrawal will delay trial or adversely prejudice the client. Thus, the court is more likely to grant a request to withdraw the earlier it is brought, if efforts to try to find a reasonable alternative to withdrawal have been explored, and attempts to help locate substitute counsel have been made.

Where there is a failure to pay or an especially fractious relationship, a written agreement that allows for withdrawal under these circumstances is particularly important. The withdrawal process in the agreement should contain provisions to provide the client time to obtain substitute counsel, to continue protecting the client’s interests until the relationship ends, and to return the client’s papers, property, and unearned fees.

Even if you can satisfy these requirements, most courts require lawyers to seek and obtain the court’s permission before ending the representation in the middle of the case. If withdrawal is denied, the lawyer must continue the representation. Similarly, the process of seeking permission to withdraw does not suspend your obligations to maintain a client’s confidentiality. That ethical responsibility could impede your ability to provide the information that a court needs to determine whether to allow withdrawal. ABA Formal Opinion 476 acknowledges that the disclosure dilemma is a “procedural problem that has no fully satisfactory solution.” I recommend

citing the applicable rule in your jurisdiction to alert the court.

Although ABA Formal Opinion 476 suggests that, at first, lawyers avoid confidentiality by stating that their motion is based on “professional considerations,” numerous courts have rejected the cloaked cause assertion and demanded specific details about the reasons for withdrawal. In these circumstances, you may “disclose information regarding the representation of the client that is limited to the extent reasonably necessary to respond to the court’s inquiry and in support of that motion to withdraw.” The opinion cautions that judges should “seek to balance their need for information about the facts underlying the motion with the client’s right to confidentiality”—a balance that requires cooperation among members of the bench and bar. Case law suggests that lawyers should use available procedural protections, such as sealed filings and in camera review, to protect the client’s confidential information.

In light of these considerations and constraints, the best practice is to avoid retaining a problem client or disengaging once a problem client is identified. Evaluating potential problem clients requires you to ask yourself these questions:

- Can they afford to pay your anticipated fees?
- What is their litigation and claims history, involving previous lawyers, other professionals, and in general?
- Is the representation limited, and is your role clearly defined?

To identify clients who develop into problem clients, you should periodically ask yourself the following:

- Is the client paying on time and without unreasonable pushback?
- Is the client cooperative?
- Has the client become overly demanding?
- Has the client made any material misrepresentations or failed to make material disclosures?

Affirmative answers to these questions require you to take action—the sooner, the better. If you work in a firm, speak to others there. If not, call your local ethics hotline. Memorialize the problems and attempts to solve them. Contact the risk management department of your insurance carrier for advice. If the motion to withdraw is granted, send a clear disengagement letter—an important step to ending a problematic attorney-client relationship and starting the limitations period on any subsequent litigation. The letter should contain a summary of the case status, deadlines, outstanding fees and costs, and include arrangements to transfer the client’s file. **■**

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