

Chapter 7

Termination of the Representation

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Representation

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TERMINATION
of the Representation

Chapter 7

Termination of the Representation

The very end of the Attorney-Client Relationship is just as important as the beginning. There are multiple reasons for termination, such as: 1) the legal matter is completed; 2) the attorney is discharged by the client; or 3) the attorney withdraws. Regardless of how the representation ends, lawyers should always seek to protect their clients and themselves by closing their client's files properly. See the Checklist for Termination of Representation attached for a step by step way to accomplish this.

While the ideal is for an attorney to fully conclude every legal matter to the client's satisfaction, that is not always realistic. Sometimes, the right and ethical thing to do is to withdraw.

Simple Reasons for Termination

The termination of representation of a client may occur for several reasons:

- The matter has been concluded by closure, settlement, judgment, appeal or dismissal.
- The client and the lawyer have mutually decided to terminate the representation.

Mandatory Termination of Representation

A lawyer may not represent a client, or where representation has commenced, must withdraw from the representation of a client, if:

- the representation will result in violation of the Rules of Professional Conduct or other law;
- the lawyer's physical or mental condition materially impairs her ability to represent the client;
- the lawyer is discharged (see Rule 1.16(a)); or
- the lawyer has withdrawn from and/or terminated the representation due to an actual or potential conflict of interest.

Permissive Termination of Representation

Under Rule 1.16(b), a lawyer is permitted to withdraw from representation of a client:

- if withdrawal can be accomplished without material adverse effect on the client's interests;
- the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- the client has used the lawyer's services to perpetrate a crime or fraud;
- the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
- 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;
- the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- other good cause for withdrawal exists.

Exceptions

Nevertheless, under Rule 1.16(c), notwithstanding good cause for terminating the representation a lawyer must continue representation of a client when ordered to do so by a tribunal. A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation.

Discharge by a Dissatisfied Client

There may come a time when a client becomes dissatisfied with the representation and terminates the attorney for what the client believes is just cause. It is at this time when attorneys should strive to be at their **most professional and ethical**. Again, reference the Checklist for Termination of the Representation for what you need to do to protect the client and yourself. Do not retaliate against the client. Respond professionally and timely to all reasonable requests from the client, such as a request for the file, an accounting of fees and a request for refund of unearned fees. A copy of a Sample Letter Acknowledging Discharge by a Client is attached to this section. Make yourself available to the new attorney if needed. Acting in a reasonable manner toward a dissatisfied or unreasonable client may assist you in avoiding a complaint to the Office of Disciplinary Counsel or a malpractice suit.

File Retention

File Retention Period: please see LSBA Rules of Professional Conduct Committee Public Opinion on File Retention - 06-LSBA-RPCC-008 PUBLIC Opinion (1/4/2006) online at <http://files.lsba.org/documents/Ethics/06LSBARPCC008.pdf>.

Client files should be retained for a minimum of five years after termination of the representation. [NOTE: There is a 10-year prescriptive period for some negligent attorney disciplinary violations and no prescriptive period applicable to the filing of a complaint against an attorney accused knowing or intended misconduct.

The file, including attorney "work product," is the property of the client, not the lawyer. Upon written request by the client, you must promptly release the entire file to the client or the client's new lawyer. You should retain a copy of the file, but may not condition release of the file over issues relating to the expense of copying the file or for any other reason - the most common of which is payment of fees or costs. (Rule 1.16(d).) See also the LSBA Rules of Professional Conduct Committee Public Opinion on Surrender of File upon Termination of Representation at <http://www.lsba.org/DocumentIndex/EthicOpinions/FileSurrenderPublicationProof.pdf>.

If not agreed to in the fee agreement or engagement letter, the responsibility for the cost of copying must be determined by a court in an appropriate proceeding. (Rule 1.16(d).) In essence, this means that you must release the file first and pursue the client for the cost of copying it later. If you have recorded your contract or filed an intervention to protect your fees, and have been discharged without good cause, you may be entitled to recover the copying costs in that proceeding. Ideally, the fee agreement should specify that the client will bear the actual copying costs in the event of termination of the representation.

Checklist for Termination of the Representation

After the representation for which you were retained has concluded, certain procedures should be undertaken in terminating the representation:

- Take all steps which are reasonably practicable to protect the client's interests, such as giving reasonable notice of the termination, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any fees or expenses that have not been earned or incurred. (Rule 1.16(d).)
- Ensure that you have complied with all applicable law, including local rules of court, before filing a Motion to Withdraw as Counsel of Record.
- Write the client a disengagement letter, signifying that the representation has ended. See Sample Disengagement Letters.
- Review the file. Make sure all client documents are returned to the client. Purge the file of any redundant or duplicate materials.
- If appropriate, calendar any future deadlines in the case, such as reinscription of a mortgage, revival of a judgment, etc.
- Prepare a file closing sheet. See sample form, "Checklist for Closing Files," in the File Management Section. This form should be adapted for your particular practice. This form also should be used to record vital information regarding client records and the client's file.
- Close the file.
- Generate a final invoice to the client.
- Document and return all client funds held in trust and any other property, including original documents, belonging to the client.
- Keep complete records of any client funds held in a trust account and other property of a client for a period of at least five years after termination of the representation. (Rule 1.15(a).)

Sample Disengagement Letter (Client Dissatisfaction)

June 20, 20__

Ms. Jane J. Former Client
123 Main Street
Anytown, Louisiana 45678

RE: File Subject or Matter Description

Dear Ms. Former Client:

We received your letter of June 19th, 20__ indicating that you no longer wish our legal representation in this matter. While we firmly disagree with your conclusions regarding our representation, we respect your right to terminate our legal services. We will immediately file a Motion to Withdraw.

(Advance Deposit Option)

Attached please find a full accounting for all fees and costs in this matter. Enclosed please find our check No. ____ for \$____, representing a refund of all unearned fees and costs remaining from the advance deposit. If you have a question as to any specific charge, please inform me and I will provide additional information and explanation.

(Flat Fee Option)

We were hired for a flat fee of \$5,000.00 on Jan 1st, 20__. Attached please find a full accounting indicating all the services provided to date and a conservative estimate of hours performed on your behalf. I am enclosing a refund check for \$____ as the unearned portion of the flat fee. If you have any question as to the fees, please inform me and I will be happy to speak with you. In the event disagree with my accounting for my fees, I would be happy to submit the fee dispute to the Louisiana State Bar Association's Lawyer Fee Dispute Resolution program.

A copy of your file is enclosed. We suggest you retain new counsel as soon as possible to protect your legal rights and interests in this case. This letter will confirm that our representation of you in this matter has now formally concluded.

Sincerely,

FIRM NAME

Attorney Name

Enclosures (as stated)

Sample Disengagement Letter (Non-Payment)

June 20, 20—

Ms. Jane J. Former Client
123 Main Street
Anytown, Louisiana 45678

Certified mail. Return receipt requested.

RE: File Subject or Matter Description

Dear Ms. Former Client:

Thank you for allowing us to be of service in the above-captioned matter. As you know, our invoices have not been paid and are now more than 30 days past due. Therefore, as was explained at the outset of the engagement and in our written fee agreement, we must withdraw from representing you at this time.

We are enclosing a copy of the pleadings, correspondence and depositions taken in your case, as well as the original documents tendered to us during the representation. You should contact other counsel immediately to further pursue (and protect) your interests in this matter. Your new counsel should have adequate time to serve your best interests, and you should provide your new counsel with your file for necessary review. A memorandum detailing the complete status of the matter with deadlines noted is attached.

We regret that this action was necessary.

Sincerely,

FIRM NAME

Attorney Name

Enclosures (as stated).

[CAVEAT: Make sure any withdrawal/termination is in compliance with Rule 1.16 of the Rules of Professional Conduct.]

Sample Disengagement Letter (Conclusion of Representation)

June 20, 20—

Ms. Jane J. Former Client
123 Main Street
Anytown, Louisiana 45678

RE: File Subject or Matter Description

Dear Ms. Former Client:

[Win]

We are pleased to report that the judgment rendered in your favor is final and all legal delays have expired with no further action being taken by opposing counsel. Opposing counsel has confirmed to me in writing that his client has decided not to appeal the judgment; and a copy of that letter is enclosed for your file. Our representation of you in this matter has come to an end.

-or-

[Loss]

As you have decided not to appeal the judge's decision in the captioned proceeding, our representation of you in this matter has come to an end.

We are enclosing the following original documents:

1. Original insurance policy with XYZ Insurance Company, Policy No. 1235555;
2. Multiple original of the Act of Cash Sale of your home at 123 Main Street;
3. Original title insurance policy issued by Home Trust Title Insurance Company, Policy No. 006789; and
4. Copy of the abstract for your property dated May 3, 1996, prepared by Goodsearch, Inc.

These documents should be kept in a safe place for future reference. Also enclosed is a final invoice for services rendered. Thank you for entrusting this legal matter to us. I hope we can be of service to you in the future.

Sincerely,

FIRM NAME

Attorney Name

Enclosures (as stated)