

# 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- the lawyer has withdrawn from and/or terminated the representation due to an actual or potential conflict of interest.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.