

## **Alabama Rules of Professional Conduct**

### **Client-Lawyer Relationship**

#### **Rule 1.16.**

##### **Declining or Terminating Representation.**

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client, if:

(1) The representation will result in violation of the Rules of Professional Conduct or other law;

(2) The lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) The lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

(1) The client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(2) The client has used the lawyer's services to perpetrate a crime or fraud;

(3) The client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;

(4) 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;

(5) The representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(6) Other good cause for withdrawal exists.

(c) When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent

reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

### **Comment**

A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion.

#### *Mandatory Withdrawal*

A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may wish an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient.

#### *Discharge*

A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring the client to represent himself.

If the client is mentally incompetent, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and, in an extreme case, may initiate proceedings for a

conservatorship or similar protection of the client. See Rule 1.14.

### *Optional Withdrawal*

A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer also may withdraw where the client insists on a repugnant or imprudent objective.

A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

### *Assisting the Client upon Withdrawal*

Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law.

Whether or not a lawyer for an organization may under certain unusual circumstances have a legal obligation to the organization after withdrawing or being discharged by the organization's highest authority is beyond the scope of these Rules.

## **Comparison with Former Alabama Code of Professional Responsibility**

With regard to paragraph (a), DR 2-110(A) provided that a lawyer "shall not accept employment... if he knows or it is obvious that [the prospective client] wishes to... [b]ring a legal action... or otherwise have steps taken for him, merely for the purpose of harassing or maliciously injuring any person...." DR 2-111(B) provided that a lawyer "shall withdraw from employment... if:

"(1) He knows or it is obvious that his continued employment will result in violation of a Disciplinary Rule.

"(2) He is discharged by his client.

"(3) He receives information that he is aiding or participating in conduct believed to be unlawful."

With regard to paragraph (b), DR 2-111(C) permitted withdrawal regardless of the effect on the client if:

“(1) His client: (a) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law; (b) Personally seeks to pursue an illegal course of conduct; (c) Insists that the lawyer pursue a course of conduct that is illegal or that is prohibited under the Disciplinary Rules; (d) By other conduct renders it unreasonably difficult for the lawyer to carry out his employment effectively; (e) Insists, in a matter not pending before a tribunal, that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer but not prohibited under the Disciplinary Rules; (f) Fails to pay either fees or expenses.

“(2) His continued employment is likely to result in a violation of a Disciplinary Rule.

“(3) His inability to work with co-counsel indicates that the best interest of the client likely will be served by withdrawal.

“(4) His mental or physical condition renders it difficult for him to carry out the employment effectively.

“(5) His client knowingly and freely assents to termination of his employment.

“(6) He believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.”

With regard to paragraph (c), DR 2-111(A)(1) provided: “If permission for withdrawal from employment is required by the rules of a tribunal, the lawyer shall not withdraw... without its permission.”

The provisions of paragraph (d) are substantially identical to DR 2-110(A)(2) and (3).