When Do You Move to Withdraw as Appointed Counsel?
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I. Prevention
   a. The best way to avoid a Motion to Withdraw (and the accompanying Difficult Client) is to keep in regular communication with the client. A lot of times, these situations can be avoided but sometimes, despite our best efforts, the client insists that you withdraw from his or her case.
   b. It is true that there are some clients who were put here to test our patience and our senses of perspective and humor. If the rule is that we attempt to deal with them with patience, perspective, and humor, the greater good is served and your place in heaven is assured.
      i. If it can’t be done, it can’t be helped. Absent an EXPLICIT WRITTEN DEMAND that you withdraw, however, a motion to withdraw will be appropriate ONLY when there is a complete breakdown of the attorney-client relationship.
         1. In other words, you cannot simply move to withdraw just because your client is difficult or obnoxious, unless said client has expressly written that he wants you to withdraw. If he has not told you in writing to withdraw, then you continue your communication with that client and with zealous advocacy.

II. Types of Withdrawal Situations
   a. Attorney-Client Relationship is Completely Broken (Rare)
      i. You cannot establish or maintain an attorney-client relationship. The Attorney-Client relationship is not difficult—it is impossible. For example, the client is specifically threatening you or your loved ones with harm and you find the threats genuinely unsettling, or he is so consistently personally offensive that he has gotten under your skin and inside your head. Whether or not the client wants new counsel, you want to withdraw, not because you dislike the client, find him offensive, or have serious conflicts, but because it has become impossible to communicate with him. The attorney-client relationship has completely broken down from your point of view. This should be a very rare situation.
b. The Difficult Client (More Common)
   i. The typical situation is that the client’s demand that you withdraw is a function of completely unreasonable and unrealistic expectations, naïve and ill-informed legal theories, or absurd proposed courses of actions. The clients want you to argue X, or file Y, or do Z, when X, Y and Z AT BEST will weaken the overall presentation of the client’s case to the reviewing court. The client may be unpleasant or obnoxious, but that is not the problem. The problem is that you cannot do what the client wants and fulfill your duty of zealous representation, or that what the client wants is simply impossible, and you cannot make the client understand. The client may suffer from mental illness or may just be mean. You believe that the client’s desire that you be discharged will not serve the goal of getting the client relief from the trial court judgment and could hurt him or her, if only because substitution of counsel will delay a resolution of the appeal. In this situation, the Motion to Withdraw will be a plain, vanilla motion but will not necessarily advocate that the court relieve you of the representation.

c. Appointed Counsel Has become Seriously Ill or Some other Emergency
   i. If something occurs, a medical emergency, family issue, etc., and it becomes obvious that you will not be able to continue your case load for the foreseeable future, call Staples and let him know immediately. He will assist you in the withdrawal process and getting new counsel re-appointed.

III. Request to Withdraw
   a. Sometimes, the request to withdraw is pretty clear. “I want you to withdraw from my case.” Sometimes, it is less clear.
   i. When the request is clear, first try to re-establish communication. If the request is “if you don’t write back, I don’t want you to be my attorney anymore,” then you should obviously write back.
   ii. If the client says “I want a different lawyer because it is obvious that you are working against me” or leaves a voicemail stating “You are fired. Quit sending me things. I told you before on the voice mail that you are fired,” then you need to get more clarification.
iii. But DO NOT MOVE TO WITHDRAW until you have written your client again, you explain withdrawal (that you must have express, written permission in order to file the motion), that the Court of Appeals may not grant the motion, in which case, the two of you are stuck together (but phrase it a little more delicately).

b. Your response letter, whether the request is clear or not, should tell the client that you need the written permission, that because you were appointed by court order he cannot simply fire you, and that the Court of Appeals may not grant the motion. Also remind the client that while he or she has the right to counsel on appeal, he or she does not have the right to counsel of their choice.
   i. If the client is nearby, and if you think that the client would be willing to meet with you, then you can also arrange a prison visit. See Handout on Prison Visits.

IV. Next Step – Client Again Puts in Writing that he Wants you to Withdraw
   a. If, after you take appropriate steps to try to address the client’s concerns, the client is steadfast in his intent to discharge you, and he has PUT THE REQUEST IN WRITING, you are ethically bound to move to withdraw.
      i. See RPC 1.16(a)(3)

V. Confidential Information in the Motion to Withdraw
   a. You must very narrowly tailor any disclosure of confidential communications you make in the motion to withdraw. You can disclose such information only to the extent that the disclosure is necessary to accomplish your ethical responsibility. See generally Rule 1.6.
      i. Your ethical responsibility may be to end the relationship (i.e., Section II (a.) above)
      ii. Your ethical responsibility may be to make a plain, vanilla motion to withdraw, but not necessarily to advocate that the court relieve you of the representation (i.e. Section II (b.) above).
   b. You should limit disclosure only to what is necessary to the specific situation. There are creative methods of suggesting that the client is difficult or paranoid without actually writing it. Remember, you still owe your client a continuing duty of loyalty even after the relationship ends.
i. While this seems an obvious point of correct ethical and professional behavior, there is certainly a temptation to take a shot at a client who has repeatedly told you that you would be more effective taking orders at the local Wendy’s. But don’t.

VI. Different Types of Motions

a. Client who is Difficult and Mentally Ill
   i. If the client is mentally ill and is making demands clearly rooted in dementia or paranoia, you might simply make the motion, recount the number of times you have written to the client and visited him, cite Rule 1.16(b)(4), Rule 1.14 (Client with Diminished Capacity), and Rule 3.1 (Meritorious Claims and Contentions), and attach a copy of these rules to the motion.

   1. The implicit message to the court is, “My client is mentally ill and is asking me to get out because I won’t take irrational actions, but withdrawal would not be in his best interest.”

b. Client who is Difficult (And Mean or Hateful or Rude or Obnoxious)
   i. If the client is consistently ill-informed and persistent in ignoring the accurate information you provide, insisting that you raise a clearly unsupported claim or simply a claim that will impair the effectiveness of the brief, you might cite Rule 1.16(a)(3), Rule 3.1 (Meritorious Claims and Contentions), and Jones v. Barnes, 463 U.S. 745, 77 L.Ed. 2d 987 (1983), which holds that appellate counsel is not obligated to raise even a non-frivolous claim the client demands be raised if counsel determines that the overall effectiveness of the representation will be enhanced by not raising the claim. (Hopefully, you cited this case in a previous letter to your client.)

   1. The message to the court is, “My unsophisticated, obnoxious, and ill-informed client is asking me to run issues that will hurt him, and withdrawal is not in his best interest.”

c. Situations Where Relationship Has Completely Broken Down (Rare Situation in Section II (a.) above)
   i. If you are actually seeking to terminate the representation, and the client will not consent to disclosure of specific information, you might recount your contacts with the client, state that you
believe you cannot continue to provide effective assistance of
counsel, cite Rule 1.4(a)(5) and/or Rule 1.16(a)(2). You also
should explicitly tell the court you need to get out because
you’ve tried to establish an attorney-client relationship, but
have found it impossible to do so.

1. In this motion in which you really are trying to terminate
the representation, please include in the motion a request
that the Office of the Appellate Defender be re-appointed
should the motion be granted.

2. Again, this is a RARE situation, one that many of us will
NEVER encounter.

VII. Motion Decided
   a. Motion Denied
      i. If the appropriate court denies the motion, you continue as
counsel of record. You are obligated to communicate with the
client as if the motion to withdraw had never been filed, and to
continue to represent him zealously.

   b. Motion Granted
      i. If the court grants the motion, you are out. In that case, please
document the circumstances of the withdrawal by attaching a
copy of your withdrawal motion and the resulting order to your
final fee application.

VIII. Miscellaneous
   a. If you aren’t sure what type of situation you are in, or still just
uncertain, it is appropriate to call Staples and ask for guidance.