# How Attorneys Can Ethically Terminate A Client Relationship

By **Trisha Rich** (March 1, 2022)

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For as long as attorney-client relationships have existed, so have attorney-client breakups.

Obviously, a client can always discharge their lawyer, for any reason or no reason. Lawyers do not have similar latitude, however, and as we have seen in the recent litigation of Bartlit Beck LLP v. Okada in the U.S. District Court for the Northern District of Illinois,[1] judges will sometimes show skepticism of a law firm's request to withdraw from its representation.

In this case, Dentons attempted to withdraw from its representation of Japanese casino billionaire Kazuo Okada, who is embroiled in ongoing litigation with Bartlit Beck related to $54.6 million in legal fees that Bartlit Beck alleges that Okada owes, an award recently upheld by the U.S. Court of Appeals for the Seventh Circuit.

On Jan. 11, Dentons appeared before U.S. District Court Judge John Kness on its motion for leave to withdraw.

The motion was less than two pages long, and cited only that the movant attorneys wanted to withdraw "due to an irretrievable breakdown in the attorney-client relationship with Okada."

Bartlit Beck opposed Dentons's motion, calling it strategically timed and arguing that it was yet another strategy purposefully designed to delay the case and prejudice Bartlit Beck.

Dentons understandably objected to that characterization, arguing again that there was a breakdown in the attorney-client relationship that made further representation impossible.

Judge Kness was troubled by the lack of detail and ordered Dentons to file an ex parte statement under seal that provided additional details on the reason for the withdrawal request.

Judge Kness also pointed out that Bartlit Beck's opposition to the motion was unusual, as it is typically a withdrawing law firm's client who objects to a lawyer or law firm's attempt to withdraw.

While Dentons argued that its reasons for wanting to withdraw were both confidential and protected by attorney-client privilege, Judge Kness stated that if the reason for the withdrawal was due to lack of payment by Okada, he did not believe that confidentiality or privilege rules would apply to protect that information.

Ultimately, Dentons submitted additional information, and on Jan. 26, Judge Kness granted the motion to withdraw.

Are there lessons, though, that we can all learn from this situation?

The American Bar Association's Model Rule 1.16,[2] which has four parts, governs our abilities and obligations in declining or terminating representation.

Paragraph (a) provides mandates, and tells us that we cannot represent a client, or must withdraw from representing a client, if our representation would result in a violation of the Rules of Professional Conduct, if our physical or mental condition interferes with our ability to represent the client, or if we are discharged.

Paragraph (b) provides the seven situations in which lawyers may withdraw from representing a client, and includes a catchall situation:

1. The withdrawal can be accomplished without materially and adversely affecting the client's interests;

2. The client insists on using the lawyer's services to accomplish something that the lawyer reasonably believes is criminal or fraudulent;

3. "[T]he client has used the lawyer's services to perpetrate a crime or fraud";

4. The client insists on taking some action that the lawyer finds "repugnant or with which the lawyer has a fundamental disagreement";

5. The client fails to fulfill an obligation to the lawyer regarding the lawyer's services, after the lawyer has given the client warning that she will withdraw unless the client fulfills that obligation;

6. "[T]he representation will result in an unreasonable financial burden [to] the lawyer" or the representation "has been rendered unreasonably difficult by the client"; or

7. Other good cause.

Paragraph (c) requires that lawyers comply with applicable laws requiring notice to or permission from a tribunal, where applicable, and provides that a lawyer shall continue the representation when ordered to do so by the tribunal.

Finally, Paragraph (d) mandates that the lawyer must take reasonably practicable steps to protect the client's interests during and following the termination of the attorney-client relationship.

What can you do to avoid a situation like the one described above?

First, the earlier you can identify a situation in which you need or want to withdraw, the better. While avoiding attorney-client relationships with problematic clients is the best way to manage risks, ending problematic attorney-client relationships as early as possible comes in a close second.

The earlier you accept that an attorney-client relationship has irretrievably broken down and that, as a result, you need or want to withdraw, the better off everyone will be — and the more likely a tribunal will be to grant a motion to withdraw.

The longer you stay in such a relationship, the more likely a tribunal will find that your withdrawal will cause prejudice.

If you have to petition a tribunal to withdraw, you will want to provide enough details in your motion that the decision maker can make an informed determination, but you also

need to be careful to not disclose information that would be covered by the broad protections of Rule 1.6, or would be protected by attorney-client privilege.

Perhaps the best way to signal to the judge or other decision maker the reason for your withdrawal is to actually cite the paragraph of the rule that you are attempting to withdraw under.

Is your client trying to commit a crime or fraud? You are moving to withdraw under Rule 1.16(a)(1) and Rule 1.16(b)(2), because the representation may result in a violation of the Rules of Professional Conduct, and you have a reasonable belief the client is using your services to engage in criminal or fraudulent behavior.

Has your client fired you? You are moving to withdraw under Rule 1.16(a)(3), as a result of your client's termination of the relationship.

Has your client stopped communicating with you or stopped paying you? You are moving to withdraw under Rule 1.16(b)(5), as a result of your client failing to substantially fulfill an obligation to you.

Giving the tribunal a little more color on the reasons for your withdrawal will help it understand what is happening and why your withdrawal is necessary.

Be prepared for a judge to ask for additional information, as the judge did in Bartlit Beck, and have a plan on how you are going to communicate additional information without violating your other obligations to your client.

And remember, you can always disclose confidential information to the extent required to seek help from counsel on how best to comply with your duties under Rule 1.6(b)(4).

Once you withdraw or are granted leave to withdraw from a tribunal, you will want to make sure that you follow the requirements of Rule 1.16(d).

Make sure your now-former client's interests are protected by, for example, giving them reasonable notice of your withdrawal, providing copies of the client file where necessary and timely refunding any amounts you are holding in trust.

You should also document the end of the attorney-client relationship in a disengagement letter to the client, which should clearly communicate the termination of the relationship, but also inform the client of any impending action items or deadlines.

Remember that your ethical and fiduciary obligations to your client are in force throughout the lifetime of the attorney-client relationship.

Terminating an attorney-client relationship before the end of a matter is never pleasant, but if you follow the steps outlined here, you can make the process a little less painful for everyone involved.

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*Trisha M. Rich is a partner at Holland & Knight LLP.*

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[1] Bartlit Beck, LLP v. Okada, Case No. 1:19-cv-08508, U.S. District Court for the Northern District of Illinois.

[2] I am going to use the text of the ABA Model Rule for purposes of this article; please check your local jurisdiction to see what language it has adopted.