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Thursday, April 15, 2021

Clerk of the Supreme Court
P.O. Box 40929,
Olympia, WA 98504-0929

Re: Comment on proposed amendment to Civil Rule 71

Dear Clerk of the Court;

The Domestic Relations Attorneys of Washington (D.R.A.W.) is a statewide group of over 500 Family Law and Domestic Relations attorneys. After review and extensive discussion, the DRAW Board voted to oppose PORTIONS OF the proposed Amendments to Civil Rule 71 ("Amendment") as follows:

DRAW has eight concerns with the proposed Amendment:

First, the Amendment could result in unnecessary fees by adding a new layer of bureaucracy to the Withdrawal process. For instance, the proposal builds in the additional step of "further proceedings" (proposed amended section 4), thus creating the situation where a court could conceivably order – *sua sponte* – a hearing. Further, the Amendment permits a court – again *sua sponte* – to decide to deny the request for Withdrawal. Thus, the decision-maker could improperly stand in the shoes of a party.

Second, the Amendment does not seem to contemplate occasions when a Client ends the attorney- client relationship. In such cases, the Amendment could result in court interference in confidential matters. The court does not know what conversations have occurred or if attorney and client are estranged. Yet, the client would have contemplated the consequences of *his* decision when ending the relationship.

Third, pursuant to the current rules, a remedy to improper Withdrawal already exists. The client receives notice of an intended Withdrawal, presumably before anyone

else. Any party may object to the withdrawal, which protects the rights of all involved. DRAW believes the current remedy is appropriate and works well.

Fourth, an attorney withdrawing incident to RPC 1.7 is generally restrained from saying why the attorney is withdrawing. Even mentioning "RPC 1.7" during Withdrawal may be an impermissible disclosure of a "confidence." This is particularly true when an attorney "must withdraw." The benevolent intentions of the Amendment could be thwarted if the Court is prejudiced by the airing of inadmissible "dirty linens" or "bad acts." In sum, CR 71 should not be allowed to conflict with RPC 1.7.

Fifth, there are both Constitutional and Due Process concerns. (U.S. Const. Am XIII, U.S. Const. Am XIV) Any rule that requires compulsory work without consent or compensation will run afoul of prohibitions against involuntary servitude. Likewise, there are potential Due Process concerns.

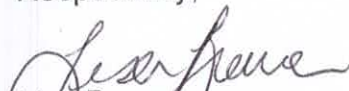
Sixth, the Amendment triggers significant economic problems, particularly for small or solo practitioners. Many such Practitioner's incomes fluctuate month-to-month. If an attorney is "compelled" to take a case to trial without pay, the attorney's income for that month may be zero (given the consuming nature of trial litigation - prep-time, briefing, pre-trial hearing, pretrial motions, trial time, and drafting orders). A \$0.00 income in a month can result in inability to pay staff, inability to pay bills, impaired credit, and so on. This, DRAW believes, the court should not have the ability to do because it will only further dwindle the number of attorneys willing to work with lower income clients.

Seventh, DRAW believes other options are better tailored to reducing costs of litigation. Namely, sanctions for bad faith, frivolous motions, and discovery abuses could reduce the cost of litigation more than the proposed Amendment. In particular, DRAW supports sanctions where there is intransigence. Courts can also use reasonable fee awards as allowed by statute, court rule, or case law, to discourage litigiousness. Use of fee awards, sanctions, or both, will reduce the number of clients driven to poverty by a litigious opponent. In turn, clients who are not financially broken will continue to retain counsel, who will not be forced to withdraw. Litigants who learn that abusive tactics will not work are more likely to settle, which will reduce judicial caseloads.

Eighth, each county adopts deadlines by which mediation is to occur. DRAW is concerned that if attorneys are induced to withdraw before the 90-day date, any mediations scheduled less than 90 days before trial are less likely to settle. As a result, more cases would go to trial, not less. This frustrates the very intent that the sponsors seek to avoid.

That said, DRAW *does agree* with the proposed pattern form and the requirement to provide a link to Court Rules and copy of Case Scheduling Order to the Party and a courtesy copy of the Withdrawal to the assigned judge's department.

Respectfully,


Lisa Brewer
DRAW President

WASHINGTON STATE BAR ASSOCIATION

Advisory Opinion: 2225

Year Issued: 2012

RPC(s): RPC 1.2(a), 1.2(f), 1.4, 1.6, 1.16, RCW 2.44

Subject: Attorney Withdrawal in Immigration Matters

The Committee received an inquiry concerning a lawyer's rights and duties to withdraw from representation in the context of representing clients in immigration matters. To facilitate a comprehensive analysis, the Committee modified the inquiry to the following:

It is standard practice in most offices for the lawyer to set deadlines for immigration clients for the return of information necessary to properly complete forms and supporting documents. The lawyer is unable to complete the forms and gather supporting documents without the client's assistance. If the lawyer does not comply with the Immigration Court's deadline, then the lawyer risks discipline by the Immigration Judge (who has the authority to file a formal complaint with EOIR against the lawyer).

In other situations, an immigration client has failed to pay the lawyer, but has not formally discharged the lawyer or responded to the lawyer's demands for payment.

In these circumstances:

1. When a client refuses to communicate with the lawyer sufficiently to permit effective representation, may the lawyer withdraw from representation, and is the lawyer required to withdraw?
2. When a client fails to respond to the lawyer's demand for payments due for past services, may the lawyer withdraw from representation?
3. In supporting a motion to withdraw, may a lawyer disclose to the court that the basis for the lawyer's motion is the client's failure to respond to requests for information or supporting documents, failure to pay fees for past services, or the lawyer's inability to locate the client?
4. When a client discharges a lawyer but is subsequently arrested during the period that the lawyer's withdrawal motion is pending, what are the lawyer's ethical obligations with respect to the client's post-discharge arrest?

5. What are a lawyer's ethical obligations if a judge delays ruling on a withdrawal motion or denies the motion?

Analysis

1. When a client refuses to communicate with the lawyer sufficiently to permit effective representation, may the lawyer withdraw from representation, and is the lawyer required to withdraw?

Permissive withdrawal

When a client refuses to communicate with a lawyer sufficiently to permit effective representation, the lawyer is permitted to withdraw after making reasonable efforts to locate and communicate with the client. RPC 1.16(b)(5) allows withdrawal when a client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and the client has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled. The client's disappearance or failure to communicate with the lawyer constitutes a failure to fulfill an obligation to the lawyer, and is therefore appropriate grounds for the lawyer's withdrawal. See Advisory Opinions 1796, 1873.

In addition, under RPC 1.16(b)(6), a lawyer may withdraw if representation has been rendered unreasonably difficult by the client. The client's disappearance and failure to communicate, in circumstances in which the lawyer needs to be in contact with the client to represent that client effectively, constitutes alternative grounds for withdrawal. See Advisory Opinions 1796, 1873.

Mandatory withdrawal

A lawyer must withdraw if either discharged by the client (RPC 1.16(a)(3)) or continued representation will result in violation of the Rules of Professional Conduct or other law (RPC 1.16(a)(1)). The determination of whether an attorney-client relationship has concluded on a particular matter is generally an issue of fact that is determined using common law standards rather than the RPCs. See *Hipple v. McFadden*, 161 Wn.App. 550, 558-59, 255 P.3d 730 (2011). Termination of an attorney-client relationship may be implied from the circumstances. *Id.* at 559. Under the test announced in *Hipple*, an attorney-client relationship on a particular matter is generally considered concluded when "the client has no reasonable expectation of continued representation." *Id.* at 559.

RCW Chapter 2.44 governs attorney authority and generally requires an attorney to have client authority to proceed with a representation. If a client has disappeared or fails to communicate despite the lawyer's reasonable efforts to locate and communicate with the client, then, depending on the particular circumstances involved, the lawyer may reasonably conclude that the lawyer no longer has the requisite authority to proceed on behalf of the client under RCW Chapter 2.44 and that mandatory withdraw is triggered under RPC 1.16(a)(1). If so, the lawyer would still need to comply with any court requirements for seeking withdrawal in accord with RPC 1.16(c).

2. When a client fails to respond to the lawyer's demand for payments due for past services, may the lawyer withdraw from representation?

Yes, the lawyer may withdraw if a client has failed to pay for services after the lawyer has given reasonable warning that the lawyer will withdraw absent payment. In those circumstances, the client's failure to pay would constitute the client's failure to fulfill an obligation to the lawyer under RPC 1.16(b)(5).

See RPC 1.16, Comment [8]. Withdrawal is also permitted under RPC 1.16(b)(6) if the client's failure to pay would make continued representation an unreasonable financial burden on the lawyer.

3. In supporting a motion to withdraw, may a lawyer disclose to the court that the basis for the lawyer's motion is the client's failure to respond to requests for information or supporting documents, failure to pay fees for past services, or the lawyer's inability to locate the client?

A lawyer's duty of confidentiality under RPC 1.6 remains in effect when seeking a court's permission to withdraw. Even if information in the lawyer's possession would support withdrawal and is necessary to provide a full explanation, the lawyer may not disclose that information if it is protected by RPC 1.6.

Although RPC 1.6 does not prohibit a lawyer from providing notice of withdrawal (RPC 1.6, Comment [25]), lawyers are cautioned that confidentiality obligations are broad, and apply "not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source." RPC 1.6, Comment [3]. The duty of confidentiality remains in effect after the lawyer-client relationship ends (RPC 1.6, Comment [18]), so even when the lawyer is seeking to withdraw based on actual or constructive discharge, the lawyer may not disclose information that is subject to RPC 1.6 protections to the tribunal.

The comments to the RPCs recognize the tension between confidentiality obligations and the practical necessity to provide the court with an adequate explanation for the basis for withdrawal: "The court may request 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." RPC 1.16, Comment [3]. Thus, the rules anticipate a framework in which the court will render a decision, even if the lawyer has provided only a limited factual background. If the court deems it necessary to have additional information, then the court may order the lawyer to disclose that information, and the lawyer may then disclose under RPC 1.6(a)(6) (a lawyer "may reveal information relating to the representation of a client to comply with a court order"). Even then, however, the lawyer should limit disclosure to the extent reasonably possible. As Comment [14] to RPC 1.6 provides, "a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable."

4. When a client discharges a lawyer but is subsequently arrested during the period that the lawyer's withdrawal motion is pending, what are the lawyer's ethical obligations with respect to the client's post-discharge arrest?

The client's discharge of the lawyer typically terminates the lawyer's right and obligation to speak or take any actions on the client's behalf, even for the purpose of furthering the client's perceived interests. RPC 1.16(a)(3); see also Advisory Opinion 954 (lawyer's inability to reach the client precludes the lawyer from taking any further action on the client's behalf); Advisory Opinion 1527 (lawyer's withdrawal precludes the lawyer from signing court order, even though the lawyer's representation was still in effect at the time of the underlying hearing); Advisory Opinion 1873 (when the client has disappeared, the lawyer may not settle the client's claim without specific authority from the client).

Here, the lawyer has been discharged by the client, but the lawyer's withdrawal motion has not yet been granted by the court. With respect to the underlying action, the lawyer must continue to represent the client until the court has granted the withdrawal motion, subject to the limitations on representation in light of that discharge (see further analysis below). If the arrest is on an unrelated matter, then even if that arrest would affect the matter in which the withdrawal motion is pending, the lawyer has no right or obligation to take further action absent a new engagement.

5. What are a lawyer's ethical obligations if a judge delays ruling on a withdrawal motion or denies the motion?

If a lawyer has moved to withdraw, the lawyer must continue to serve until the court grants that motion. Even when proper grounds for withdrawal exist, a lawyer must continue representation if ordered to do so by a tribunal. RPC 1.16(c); see also Advisory Opinion 1169; RPC 1.2(f) (prohibiting a lawyer from acting on behalf of a person or organization without authority "unless the lawyer is authorized or required to so act by law or a court order"; Comment [17] to that rule explicitly identifies a court's denial of a withdrawal motion under RPC 1.16(c) as grounds for a lawyer to continue acting on behalf of a client, even absent client authority).

Continued representation while a withdraw motion is pending presents obvious pitfalls, particularly if the client's disappearance or refusal to communicate is the basis for withdrawal. Although a lawyer ordinarily may not take action without his or her client's direction and consent, he or she may be faced with the necessity to take action or make decisions, despite the absence of the client, if a court delays ruling on a withdrawal motion or denies the motion. In that event (and, in the case of a pending withdrawal motion, after diligently pursuing a ruling from the court), while the lawyer may not substitute his or her own objectives, the lawyer must continue representation consistent with the known objectives of the client. See RPC 1.2(a) and Comment [3] ("At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization").

Advisory Opinions are provided for the education of the Bar and reflect the opinion of the Committee on Professional Ethics (CPE) or its predecessors. Advisory Opinions are provided pursuant to the authorization granted by the Board of Governors, but are not individually approved by the Board and do not reflect the official position of the Bar association. Laws other than the Washington State Rules of Professional Conduct may apply to the inquiry. The Committee's answer does not include or opine about any other applicable law other than the meaning of the Rules of Professional Conduct.

WASHINGTON STATE B A R A S S O C I A T I O N

Advisory Opinion: 201701

Year Issued: 2017

RPC(s): RPC 1.6(a)-(b), 1.13(c)-(e), 1.16(a)-(d), 3.3(c)-(d)

Subject: Lawyer Withdrawal; Disclosure of Confidential Client Information in Motion to Withdraw

Facts:

Lawyer, who has been representing Client in litigation pending in Washington Superior Court, decides that there is a mandatory or permissive basis for withdrawal from the representation under RPC 1.16(a) and (b). [n.1] The basis for withdrawal does not involve a situation in which there is an imminent risk of death or serious bodily injury under RPC 1.6(b)(1), [n.2] permissible "up the ladder" reporting out under RPC 1.13(c) through (e), [n.3] the realization by Lawyer that Lawyer has offered false testimony or evidence under RPC 3.3(c) or (d), [n.4] or any other situation in which Lawyer is required by substantive law or by the RPCs to disclose the reasons for Lawyer's withdrawal. [n.5]

Client is either unwilling or unable to make arrangements for a substitution of counsel. Lawyer understands that pursuant to RPC 1.16(c) and (d), [n.6] as well as Superior Court Civil Rule 71 [n.7] or Superior Court Criminal Rule 3.1(e), [n.8] Lawyer must file a motion for leave to withdraw with the trial court and that if the trial court denies the motion to withdraw, Lawyer must either remain in the case, seek reconsideration by the trial court or seek appellate relief.

Question:

Without violating RPC 1.6, what information about Client may Lawyer provide when filing the motion to withdraw?

Conclusion:

Without violating RPC 1.6, Lawyer may always voluntarily inform the court that Lawyer believes that there is a basis for withdrawal pursuant to RPC 1.16 or that Lawyer believes that professional considerations make it appropriate for the lawyer to seek leave to withdraw. Lawyer may also make other similar statements as long as Lawyer does not disclose the particular reasons or basis for withdrawal. In addition, Lawyer may always state, without violating RPC 1.6, that due to Lawyer's obligations to Client pursuant to RPC 1.6, Lawyer cannot provide a further explanation on the record but will do so in camera if the court

so requires.

Lawyer may describe the specific basis for withdrawal on the public record if Client gives informed consent to the statement or if Lawyer owes no duty of confidentiality under RPC 1.6(a).

Lawyer may also offer further information in camera and under seal if ordered to do so by the trial court.

If the trial court orders Lawyer to place any further information on the public record or asserts that the motion to withdraw will be denied unless further information is provided on the public record, and if the information that Lawyer would need to furnish is protected under RPC 1.6(a), then:

- If Client expresses an intent to seek immediate appellate review or if Lawyer is willing to seek immediate appellate review on Client's behalf, Lawyer should not make any further disclosure until the process of appellate review has run its course unless the trial court has threatened to hold the lawyer in contempt for not providing the information or the failure to disclose would somehow violate another RPC.
- If Client does not express an intent to seek immediate appellate review or cannot be found, Lawyer may make additional disclosure on the public record if but only if Lawyer reasonably believes that doing so is required by the trial court in order to obtain permission to withdraw.

Analysis:

This opinion requires that we balance Lawyer's right or duty to seek leave to withdraw with Lawyer's obligations of confidentiality to Client. With respect to the latter, RPC 1.6 provides that:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer to the extent the lawyer reasonably believes necessary:

- (1) shall reveal information relating to the representation of a client to prevent reasonably certain death or substantial bodily harm;
- (2) may reveal information relating to the representation of a client to prevent the client from committing a crime;
- (3) may reveal information relating to the representation of a client to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
- (4) may reveal information relating to the representation of a client to secure legal advice about the lawyer's compliance with these Rules;
- (5) may reveal information relating to the representation of a client to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
- (6) may reveal information relating to the representation of a client to comply with a court order; or
- (7) may reveal information relating to the representation to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but

only if the

revealed information would not compromise the attorney-client privilege or otherwise prejudice the client; (8) may reveal information relating to the representation of a client to inform a tribunal about any client's breach of fiduciary responsibility when the client is serving as a court appointed fiduciary such as a guardian, personal representative, or receiver.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

"The Rules of Professional Conduct are rules of reason." Official Comment [14] to Scope section of Washington Rules of Professional Conduct. It would be unreasonable to construe RPC 1.6(a) to mean that when filing a motion to withdraw, Lawyer cannot state that Lawyer believes there is a basis for withdrawal, that professional considerations provide grounds for Lawyer's request for withdrawal or other similar statements that do not reveal the specific substantive basis for seeking withdrawal since such statements do not reveal any information protected by RPC 1.6(a). Accord, ABA Formal Ethics Op. 16-476 ("Opinion 16-476"). As noted in Opinion 16-476, most courts will be satisfied that such a statement provides sufficient support for a motion to withdraw that the motion will be granted. If this is or reasonably may be so, no further disclosure of information protected by RPC 1.6(a) will be permitted because Lawyer will not be able to reasonably believe that additional disclosure is necessary within the meaning of any of the subsections of RPC 1.6(b). [n.9]

In addition to stating that Lawyer believes there is a basis for withdrawal under RPC 1.16 or another similar statement, Lawyer may offer to provide additional information to the trial court in camera and under seal if ordered to do so. Such a statement does nothing more than reflect the trial court's authority to order such information and Lawyer's ability to reveal information pursuant to a court order under RPC 1.6(b)(6). The submission of such information pursuant to court order and under seal is an efficient and effective means of explaining the basis for withdrawal while protecting Client's confidentiality under RPC 1.6(a). In addition, Lawyer's implicit assertion that more information could be provided may convince the trial court to grant the motion without further review of information protected by RPC 1.6(a). Unless, if it reasonably appears to Lawyer that disclosure under seal will be sufficient to cause the trial court to permit withdrawal, Lawyer cannot reasonably believe that further disclosure on the record is necessary under RPC 1.6(b). [n.10]

In those very rare instances in which a court rules that it will not accept materials in camera and under seal and will not allow withdrawal unless Lawyer explains the reason or basis for seeking withdrawal on the public record, Lawyer may delay making disclosure and instead seek immediate appellate review of the trial court's ruling. Similarly, if Client announces an intent to seek such review, Lawyer must generally delay providing additional information until the review process has run its course and may delay providing any additional information for so long as the review process is under way. Cf. RPC 1.2(d). [n.11] If, however, Lawyer is threatened with immediate contempt, Lawyer may make disclosure to the extent Lawyer reasonably believes necessary under RPC 1.6(b)(6).

Endnotes:

1. RPC 1.16(a) and (b) provide that:

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall, notwithstanding RCW 2.44.040, 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:
- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
 - (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
 - (3) the client has used the lawyer's services to perpetrate a crime or fraud;
 - (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
 - (5) 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;
 - (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
 - (7) other good cause for withdrawal exists.

2. RPC 1.6 is quoted in full in the Analysis section of this opinion.

3. RPC 1.13(c) through (e) provides that:

(c) Except as provided in paragraph (d), if

- (1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and
- (2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) and (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

4. RPC 3.3(c) and (d) provide that:

(c) If the lawyer has offered material evidence and comes to know of its falsity, the lawyer shall promptly disclose this fact to the tribunal unless such disclosure is prohibited by Rule 1.6.

(d) If the lawyer has offered material evidence and comes to know of its falsity, and disclosure of this fact is prohibited by Rule 1.6, the lawyer shall promptly make reasonable efforts to convince the client to consent to disclosure. If the client refuses to consent to disclosure, the lawyer may seek to withdraw from the representation in accordance with Rule 1.16.

5. See, e.g., RPC 4.1, which provides in pertinent part that:

In the course of representing a client a lawyer shall not knowingly: * * * (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

6. RPC 1.16(c) and (d) provide that:

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. 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 another legal practitioner, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

7. Superior Court Civil Rule 71 states:

(a) *Withdrawal by Attorney.* Service on an attorney who has appeared for a party in a civil proceeding shall be valid to the extent permitted by statute and rule 5(b) only until the attorney has withdrawn in the manner provided in sections (b), (c), and (d). Nothing in this rule defines the circumstances under which a withdrawal might be denied by the court.

(b) *Withdrawal by Order.* A court appointed attorney may not withdraw without an order of the court. The client of the withdrawing attorney must be given notice of the motion to withdraw and the date and place the motion will be heard.

(c) *Withdrawal by Notice.* Except as provided in sections (b) and (d), an attorney may withdraw by notice in the manner provided in this section.

(1) *Notice of Intent To Withdraw.* The attorney shall file and serve a Notice of Intent To Withdraw on all other parties in the proceeding. The notice shall specify a date when the attorney intends to withdraw, which date shall be at least 10 days after the service of the Notice of Intent To Withdraw. The notice shall include a statement that the withdrawal shall be effective without order of court unless an objection to the withdrawal is served upon the withdrawing attorney prior to the date set forth in the notice. If notice is given before trial, the notice shall include the date set for trial. The notice shall include the names and last

known addresses of the persons represented by the withdrawing attorney, unless disclosure of the address would violate the Rules of Professional Conduct, in which case the address may be omitted. If the address is omitted, the notice must contain a statement that after the attorney withdraws, and so long as the address of the withdrawing attorney's client remains undisclosed and no new attorney is substituted, the client may be served by leaving papers with the clerk of the court pursuant to rule 5(b)(1).

(2) Service on Client. Prior to service on other parties, the Notice of Intent To Withdraw shall be served on the persons represented by the withdrawing attorney or sent to them by certified mail, postage prepaid, to their last known mailing addresses. Proof of service or mailing shall be filed, except that the address of the withdrawing attorney's client may be omitted under circumstances defined by subsection (c)(1) of this rule.

(3) Withdrawal Without Objection. The withdrawal shall be effective, without order of court and without the service and filing of any additional papers, on the date designated in the Notice of Intent To Withdraw, unless a written objection to the withdrawal is served by a party on the withdrawing attorney prior to the date specified as the day of withdrawal in the Notice of Intent To Withdraw.

(4) Effect of Objection. If a timely written objection is served, withdrawal may be obtained only by order of the court.

(d) Withdrawal and Substitution. Except as provided in section (b), an attorney may withdraw if a new attorney is substituted by filing and serving a Notice of Withdrawal and Substitution. The notice shall include a statement of the date on which the withdrawal and substitution are effective and shall include the name, address, Washington State Bar Association membership number, and signature of the withdrawing attorney and the substituted attorney. If an attorney changes firms or offices, but another attorney in the previous firm or office will become counsel of record, a Notice of Withdrawal and Substitution shall nevertheless be filed.

8. Superior Court Criminal Rule 3.1(e) states:

Withdrawal of Lawyer. Whenever a criminal cause has been set for trial, no lawyer shall be allowed to withdraw from said cause, except upon written consent of the court, for good and sufficient reason shown.

9. We recognize that there may be situations in which Client grants informed consent to the provision of further information or when the additional information about the basis for withdrawal is not protected under RPC 1.6(a). In such situations, further disclosure would be permitted. In our experience, however, such situations are rare.

10. Although, consistent with RPC 1.6(b)(5), Lawyer may be able to make some reasonable further disclosure in aid of suing Client for unpaid fees, a mere motion to withdraw is not the same as an action for fees. In addition, any disclosure in the course of a claim for fees must not exceed what is reasonably necessary.

11. RPC 1.2(d) provides that:

A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is

criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

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WASHINGTON STATE B A R A S S O C I A T I O N

Advisory Opinion: 1796

Year Issued: 1998

RPC(s): RPC 1.4(a); 1.15; 8.4(c)

Subject: Missing client; client location unknown and dissolution case not completed

The Committee researched and reviewed your inquiry concerning the situation where a dissolution has not been completed and the client's location is unknown. The Committee determined the following:

1. Withdrawal.

The lawyer may withdraw from representation providing she is in compliance with RPC 1.15. The lawyer should make all reasonable efforts to contact the client and notify her of the status of the matter and the withdrawal as provided in RPC 1.4(a).

2. File Retention.

Unless the lawyer surrenders the file to the client under RPC 1.15, the lawyer should retain the file.

3. Misrepresentation.

The lawyer should inform the opposing party of the status of the matter to avoid running afoul of RPC 8.4 (c), which prohibits misrepresentation. The respondent may be misled about the status of the matter (and his own marital status) if she does not inform him that the matter was not completed.

Advisory Opinions are provided for the education of the Bar and reflect the opinion of the Committee on Professional Ethics (CPE) or its predecessors. Advisory Opinions are provided pursuant to the authorization granted by the Board of Governors, but are not individually approved by the Board and do not reflect the official position of the Bar association. Laws other than the Washington State Rules of Professional Conduct may apply to the inquiry. The Committee's answer does not include or opine about any other applicable law other than the meaning of the Rules of Professional Conduct.