

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
OCT 12 2010
Clerk of the Courts

**IN RE: PETITION FOR THE ADOPTION OF AMENDED TENNESSEE
RULES OF PROFESSIONAL CONDUCT**

No. M2009-00979-SC-RL1-RL

ORDER

On September 29, 2010, the Court filed an order amending Tenn. Sup. Ct. R. 8 by adopting a comprehensive revision of the Tennessee Rules of Professional Conduct. It has come to the Court's attention that certain language was inadvertently omitted from RPC 1.16 as the result of an editing error. The Court hereby deletes in its entirety the version of RPC 1.16 contained in the Appendix to the order filed on September 29 and replaces it with the attached, corrected RPC 1.16.

The effective date of the corrected RPC 1.16 is governed by the effective-date provision set out in the Court's order filed on September 29, 2010.

IT IS SO ORDERED.

FOR THE COURT:

Cornelia A. Clark
CORNELIA A. CLARK, CHIEF JUSTICE

APPENDIX

(corrected RPC 1.16)

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 a 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 imprudent;

(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 unanticipated and substantial financial burden on the lawyer or has been rendered unreasonably difficult by the client;

(7) other good cause for withdrawal exists; or

(8) the client gives informed consent confirmed in writing to the withdrawal of the lawyer.

(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) A lawyer who is discharged by a client, or withdraws from representation of a client, shall, to the extent reasonably practicable, take steps to protect the client's interests. Depending on the circumstances, protecting the client's interests may include: (1) giving reasonable notice to the client; (2) allowing time for the employment of other counsel; (3) cooperating with any successor counsel engaged by the client; (4) promptly surrendering papers and property to which the client is entitled and any work product prepared by the lawyer for the client and for which the lawyer has been compensated; (5) promptly surrendering any other work product prepared by the lawyer for the client, provided, however, that the lawyer may retain such work product to the extent permitted by other law but only if the retention of the work product will not have a materially adverse affect on the client with respect to the subject matter of the representation; and (6) promptly refunding any advance payment of fees that have not been earned or expenses that have not been incurred.

Comment

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest, and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. *See* RPCs 1.2(c) and 6.5; *see also* RPC 1.3, Comment [4].

Mandatory Withdrawal

[2] 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.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. *See also* RPC 6.2; Tenn. Sup. Ct. R. 14. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. *See, e.g.,* Tenn. Crim. Ct. App. R. 12. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. 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. Lawyers should be mindful of their obligations to both clients and the court under RPCs 1.6 and 3.3.

Discharge

[4] 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 for the lawyer to prepare a written statement reciting the circumstances. In the special case of in-house counsel, the organizational employer may also be liable for damages for retaliatory discharge in violation of public policy, but because of the client's right to discharge the lawyer, reinstatement would not be an available remedy under such circumstances.

[5] Whether a client can discharge appointed counsel may depend on other 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 self-representation by the client.

[6] If the client has severely diminished capacity, 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 may take reasonably necessary protective action as provided in RPC 1.14.

Optional Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw for any reason 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 taking action that the lawyer considers repugnant or imprudent. The lawyer may also withdraw without the need to provide any justification and even if withdrawal would result in a material adverse effect on the client's interests if the client provides informed consent, confirmed in writing, to the lawyer's withdrawal.

[8] 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. The lawyer must, however, give the client reasonable notice of the lawyer's intention to withdraw.

Assisting the Client Upon Withdrawal

[9] 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. After discharge or withdrawal from representation of the client, the lawyer may retain work product prepared by the lawyer for the client, but for which the lawyer has not been compensated, as security for a fee only if doing so will not

have a materially adverse effect on the client with respect to the subject matter of the representation and to the extent permitted by law. The lawyer may, at the lawyer's own expense, make a copy of client file materials for retention by the lawyer prior to surrender.

[10] 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.

DEFINITIONAL CROSS-REFERENCES

- "Confirmed in writing" *See* RPC 1.0(b)
- "Fraud" and "fraudulent" *See* RPC 1.0(d)
- "Informed consent" *See* RPC 1.0(e)
- "Material" and "materially" *See* RPC 1.0(o)
- "Reasonable" *See* RPC 1.0(h)
- "Reasonably believes" *See* RPC 1.0(i)
- "Substantial" and "substantially" *See* RPC 1.0(l)
- "Tribunal" *See* RPC 1.0(m)
- "Writing" *See* RPC 1.0(n)