

# ADVISORY ETHICS OPINION 2000-03

## SYNOPSIS:

An attorney who has been appointed by the court who is discharged by the client during the preparation for a pending case which has been scheduled for a hearing on the merits, should fully advise the client of his or her rights and, consistent with the Rules on confidentiality, should prepare a motion to withdraw; and if the client consents, the lawyer should continue to prepare for the merits hearing, including conducting discovery, in the event the court denies the motion to withdraw. The lawyer is obliged to carry through to conclusion all matters undertaken for the client within the scope of the court's appointment until the relationship is terminated as provided for in Rule 1.16.

## FACTS:

A lawyer who practices in an office which is frequently appointed to represent individuals in mental health commitment and review cases requests guidance as to the lawyer's obligations to clients who discharge the lawyer and the office in the course of representation and either request alternate counsel or seek to proceed pro se. Typically, the lawyer will prepare a motion to withdraw and present it to the court, which not infrequently will schedule the hearing on the motion to withdraw concurrently with the hearing on the merits. The lawyer asks for our advice on the obligations with respect to continued preparation, protection of confidential information, and preservation of the client's legal rights, defenses and objectives during the period of time between when the client has discharge the lawyer and the court's ruling on the motion to withdraw.

## DISCUSSION:

This request presents ethical considerations that involve tension between obligations to thoroughly, vigorously and competently represent clients whose disabilities make their rights more vulnerable than other clients. For example, under Rule 1.2 (a), the lawyer "shall abide by a client's decisions concerning the objectives of representation," yet the client's ability to make certain decisions or to assist fully in his or her own representation may be limited by the disability. Moreover, in the circumstance presented here, where the lawyer is discharged, the lawyer must determine whether the client is competent to make such a decision and decide what information can be revealed to the court or others in seeking leave to withdraw, as well as how such information will affect the client's legal interests in the pending proceeding. In cases where the client has an appointed guardian ad litem, the court has already determined that the client lacks the ability to make certain decisions or cannot adequately act in his or her own interest.<sup>1</sup> In such instances, the lawyer may often rely upon the guardian's advice in how to proceed.

In cases where there is no guardian, and it is evident that the client can "understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being," **Rule 1.14 (Comment)**, the lawyer must:

- (i) determine whether the client wishes to terminate the lawyer's services immediately and does not want the lawyer to look after the client's legal affairs from such point forward (the client should be advised that unless the client requests otherwise, the lawyer's ethical obligation is to continue to prepare for the merits hearing);
- (ii) determine whether the client understands that the lawyer must file a motion to withdraw with the court and at least reveal the fact that the client has terminated the lawyer-client relationship, without revealing any other confidential information that might work to the client's disadvantage: **See Rule 1.6 (c), Rule 1.8 (b) and Rule 1.16 (d)**;
- (iii) advise the client of the consequences of the discharge of the lawyer, especially if the client wishes to proceed pro se;
- (iv) "take steps to the extent reasonably practicable to protect a client's interests, such as . . . allowing time for employment of other counsel" **Rule 1.16 (d)**;
- (v) advise the client of the probable consequences if the court denies the lawyer's motion to withdraw, including delay in the proceedings and the possibility of prolonged institutionalize;
- (vi) prepare the file to turn over to alternate counsel and advise the client that the lawyer will not reveal any confidential information concerning the client's representation to alternate counsel without the express consent of the client.

**Rule 1.14 (Client Under A Disability)** recognizes that the lawyer's obligations in the context presented to us here is "unavoidably difficult." However, the Rule "requires the lawyer to try to maintain a client-lawyer relationship which is as normal as possible with the client whose ability to make decisions is impaired, and permits the lawyer to seek protective action regarding the client only when the lawyer reasonably believes the client cannot adequately act in the client's own interest." (Comment) Thus, in addition to the confidentiality obligations of Rule 1.6 and the procedures relative to termination of representation of Rule 1.16, the lawyer should act in such a way as to harmonize the following obligations to the client:

<sup>1</sup> See Rule 1.14 (a) and (b) (Client Under A Disability).

**Rule 1.1 Competence**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

**Rule 1.2 Scope of Representation**

A lawyer shall abide by a client's decisions concerning the objectives of representation ...and shall consult with the client as to the means by which they are to be pursued . . .

**Rule 1.3 Diligence**

A lawyer shall act with reasonable diligence and promptness in representing a client.

**Rule 1.4 Communication**

...  
(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

**CONCLUSION:**

The duties of competence and diligence apply to the process of withdrawing from a matter in which the client has exercised the right to terminate representation of the lawyer. The lawyer must therefore act promptly to advise the client of the consequences, determine the scope of representation that the client desires during the withdrawal process, keep confidential all information except that which is necessary to withdraw and take steps reasonably necessary to assure that the clients interests are protected until the court appoints alternate counsel or allows the client to act pro se.