**2.2: Ending an Attorney-Client Relationship**

*This is the end, beautiful friend. This is the end, my only friend, the end.*[[1]](#footnote-0)

**Take Me Baby, or Leave Me: Ending the Attorney-Client Relationship**

*Happy families are all alike; every unhappy family is unhappy in its own way.*[[2]](#footnote-1)

It is surprisingly easy to create an attorney-client relationship, and it can be surprisingly hard for an attorney to end one. In general, a client can end an attorney-client relationship at any time, for any reason, or for no reason at all. But attorneys cannot end an attorney-client relationship without **good cause**. Sometimes, attorneys must end an attorney-client relationship, and other times the rules of professional conduct prevent attorneys from ending an attorney-client relationship. In any case, attorneys may have duties to their clients that survive the attorney-client relationship, especially the duty of confidentiality.

Sometimes, an attorney *must* end an attorney-client relationship. For example, an attorney must end an attorney-client relationship if:

* the client fires the attorney,
* the attorney cannot effectively represent the client,
* the attorney has a conflict of interest,
* representation would violate the rules of professional conduct.

Under certain circumstances, attorneys may choose to end an attorney-client relationship. But the ability of an attorney to end an attorney-client relationship is limited by the rules of professional conduct. Therefore, attorneys can end an attorney-client relationship *only* if they are permitted or required to end the relationship by the rules of professional conduct.

Furthermore, attorneys may be subject to discipline for ending an attorney-client relationship, even if it is permitted or required by the rules of professional conduct. And they may have duties to former clients that survive the attorney-client relationship.

Before ending an attorney-client relationship, an attorney should determine whether **good cause** exists to end the relationship. If an attorney ends an attorney-client relationship without good cause, the attorney may be subject to discipline and liable to the client for malpractice or breach of fiduciary duty.

| [**Model Rule 1.16: Declining or Terminating Representation**](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_16_declining_or_terminating_representation/) |
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| 1. 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 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. 2. 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. 3. 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. 4. 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 other counsel, 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. |

| **Restatement (Third) of the Law Governing Lawyers § 31 (2000): Termination of a Lawyer's Authority** |
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| 1. A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation and with an order of a tribunal requiring the representation to continue. 2. Subject to Subsection (1) and § 33, a lawyer's actual authority to represent a client ends when:    1. the client discharges the lawyer;    2. the client dies or, in the case of a corporation or similar organization, loses its capacity to function as such;    3. the lawyer withdraws;    4. the lawyer dies or becomes physically or mentally incapable of providing representation, is disbarred or suspended from practicing law, or is ordered by a tribunal to cease representing a client; or    5. the representation ends as provided by contract or because the lawyer has completed the contemplated services. 3. A lawyer's apparent authority to act for a client with respect to another person ends when the other person knows or should know of facts from which it can be reasonably inferred that the lawyer lacks actual authority, including knowledge of any event described in Subsection (2). |

| **Restatement (Third) of the Law Governing Lawyers § 32 (2000): Discharge by a Client and Withdrawal by a Lawyer** |
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| 1. Subject to Subsection (5), a client may discharge a lawyer at any time. 2. Subject to Subsection (5), a lawyer may not represent a client or, where representation has commenced, must withdraw from the representation of a client if:    1. the representation will result in the lawyer's violating 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 client discharges the lawyer. 3. Subject to Subsections (4) and (5), 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 lawyer reasonably believes withdrawal is required in circumstances stated in Subsection (2);    3. the client gives informed consent;    4. the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal, fraudulent, or in breach of the client's fiduciary duty;    5. the lawyer reasonably believes the client has used or threatens to use the lawyer's services to perpetrate a crime or fraud;    6. the client insists on taking action that the lawyer considers repugnant or imprudent;    7. the client fails to fulfill a substantial financial or other obligation to the lawyer regarding the lawyer's services and the lawyer has given the client reasonable warning that the lawyer will withdraw unless the client fulfills the obligation;    8. the representation has been rendered unreasonably difficult by the client or by the irreparable breakdown of the client-lawyer relationship; or    9. other good cause for withdrawal exists. 4. In the case of permissive withdrawal under Subsections (3)(f)-(i), a lawyer may not withdraw if the harm that withdrawal would cause significantly exceeds the harm to the lawyer or others in not withdrawing. 5. Notwithstanding Subsections (1)-(4), a lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation and with a valid order of a tribunal requiring the representation to continue. |

**You’re Fired!: Discharge**

*It's a sad situation, I must say, when someone wants to leave as bad as you want them to stay.*[[3]](#footnote-2)

*I don't feel bad about letting you go, I just feel sad about letting you know.*[[4]](#footnote-3)

Typically, clients can end the attorney-client relationship simply by firing their attorney.

* **Model Rule 1.16(a)(3):** “a lawyer shall not represent a client or . . . shall withdraw from the representation of a client if . . . the lawyer is discharged.”
* **Section 32(1) of the Restatement:** “a client may discharge a lawyer at any time.”

However, a client’s ability to fire an attorney and end the attorney-client relationship is not absolute. Under some circumstances, a court may prohibit a client from firing an attorney, and order the attorney to continue representing the client. For example, a client typically cannot fire an attorney immediately before trial, because it could enable clients to improperly delay the proceedings.

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When a client fires an attorney and hires a new attorney, the former attorney may have a claim against the former client. In a civil case, the former attorney may recover the value of the services rendered to the client.

| [***Demov, Morris, Levine & Shein v. Glantz*, 53 N.Y.2d 553 (N.Y. 1981)**](https://scholar.google.com/scholar_case?case=115272814364661020) |
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| **Summary:** MHG Enterprises operated an amusement park on a parcel of land in Queens, New York owned by HGV Associates. Harold Glantz hired the law firm Demov, Morris, Levine & Shein to represent MHG in an eviction proceeding and HGV in a condemnation proceeding. The law firm told Glantz that it would only represent MHG if it could also represent HGV. When MHG lost in the eviction proceeding, Glantz fired the law firm, and the law firm sued for fraud, breach of contract, and quantum meruit. The trial court dismissed the breach of contract claim, and the jury awarded the law firm compensation in quantum meruit and damages for fraud. The intermediate appellate court dismissed the fraud claim, but affirmed the award in quantum meruit. The New York Court of Appeals affirmed, holding that a client may fire an attorney at any time, and the attorney is only entitled to compensation in quantum meruit. |

The question on this appeal is whether an attorney may recover upon a cause of action against a former client for fraudulently inducing the attorney to enter into a retainer agreement. The Appellate Division held the cause of action is insufficient as a matter of law and we agree.

In 1972, the City of New York condemned a parcel of land in Queens owned by respondent HGV Associates upon which an amusement park was operated by respondent MHG Enterprises, Inc. Between 1972 and 1976, respondents retained several attorneys to undertake efforts to retain possession of the premises and secure the most advantageous condemnation award. Respondents remained in possession until May 28, 1976, when a Federal court ordered them to vacate the premises.

In June, 1976, respondent Glantz, the vice-president of MHG Enterprises, Inc., and a partner in HGV Associates, signed a retainer agreement which provided that appellants, individual attorneys, and a law firm, would prepare an application for a temporary stay of eviction permitting the amusement park to reopen and would represent respondents in the condemnation proceeding. Appellants were to be paid a fixed sum if the application to reopen was successful and their fee in the condemnation proceeding was dependent upon the amount eventually awarded to respondents. Appellants testified that they made it clear to Glantz that they would not work on the application to reopen unless they could also represent respondents in the condemnation proceeding. Glantz agreed to arrange to have appellants substituted as attorneys of record in the condemnation proceeding.

Appellants submitted the application to restore respondents to possession of the amusement park, which was denied. Thereafter, appellants were informed by respondents’ attorney of record in the condemnation proceeding that Glantz had issued instructions not to forward the stipulation of substitution to appellants. Glantz then formally discharged appellants in writing and requested a bill for services rendered.

In October, 1976 appellants commenced an action against respondents for fraud, breach of the retainer agreement, and the reasonable value of legal services rendered. The cause of action for fraud was grounded upon the allegation that appellants were induced to enter the retainer agreement by respondents' promise to permit them to litigate the condemnation proceeding. Appellants also alleged that from the outset, respondents never intended to substitute appellants as attorneys of record in the condemnation proceedings unless and until the application to reopen was granted.

The trial court dismissed the claim for breach of contract, but upheld the cause of action for fraud. After trial a jury awarded appellants $34,000 as the reasonable value of their services and $310,000 as damages for fraud. The Appellate Division modified the judgment, on the law, by dismissing the cause of action sounding in fraud and otherwise affirmed the judgment insofar as is pertinent here.

The unique relationship between an attorney and client, founded in principle upon the elements of trust and confidence on the part of the client and of undivided loyalty and devotion on the part of the attorney, remains one of the most sensitive and confidential relationships in our society. A relationship built upon a high degree of trust and confidence is obviously more susceptible to destructive forces than are other less sensitive ones. It follows, then, that an attorney cannot represent a client effectively and to the full extent of his or her professional capability unless the client maintains the utmost trust and confidence in the attorney.

This philosophy engendered the development of the rule, now well rooted in our jurisprudence, that a client may at anytime, with or without cause, discharge an attorney in spite of a particularized retainer agreement between the parties. Moreover, we have held that since the client has the absolute right on public policy grounds to terminate the attorney-client relationship at any time without cause, it follows as a corollary that the client cannot be compelled to pay damages for exercising a right which is an implied condition of the contract, and the attorney discharged without cause is limited to recovering in quantum meruit the reasonable value of services rendered. In *Martin v. Camp*, we stated that the rule "is well calculated to promote public confidence in the members of an honorable profession whose relation to their clients is personal and confidential".

To be sure, a deliberate misrepresentation of present intent made for the purpose of inducing another to enter a contract will normally constitute actionable fraud if there is a reliance by the party to whom the misrepresentation was made. It is equally well established, however, that a cause of action will not be cognizable in the courts of this State when it is violative of strong public policy.

The public policy of New York which permits a client to terminate the attorney-client relationship freely at any time, notwithstanding the existence of a particularized retainer agreement between the parties, would be easily undermined if an attorney could hold a client liable for fraud on the theory that the client misrepresented his or her true intent when the retainer was executed. When an attorney-client relationship deteriorates to the point where the client loses faith in the attorney, the client should have the unbridled prerogative of termination. Any result which inhibits the exercise of this essential right is patently unsupportable.

Additionally, as a matter of law, the element of reliance essential to a cause of action for fraudulent misrepresentation of present intent cannot be established in this case. Given the rule that a client may discharge an attorney without cause at any time, it is evident that appellants could not rely upon Glantz's promise to substitute them as attorneys of record in the condemnation proceeding any more than they could rely upon continued representation in the event they had actually been substituted. Thus, an essential element of a claim of fraudulent misrepresentation is conspicuously absent.

Appellants argue that the result reached today enables unscrupulous clients to defraud their attorneys with impunity. We do not agree. We have said that "the law does not permit the client to cheat his attorney." Permitting an attorney improperly discharged to recover the reasonable value of services rendered in *quantum meruit*, a principle inherently designed to prevent unjust enrichment, strikes the delicate balance between the need to deter clients from taking undue advantage of attorneys, on the one hand, and the public policy favoring the right of a client to terminate the attorney-client relationship without inhibition on the other.

| **CHECK YOUR KNOWLEDGE** |
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| 1. If a client fires an attorney for actual or perceived incompetence, should the attorney be able to recover in *quantum meruit*? |
| 1. Many courts have held that a fired attorney may also recover a percentage of a contingent fee. “The outgoing attorney may elect to take compensation on the basis of a presently fixed dollar amount based upon quantum meruit for the reasonable value of services or, in lieu thereof, the outgoing attorney has the right to elect a contingent percentage fee based on the proportionate share of the work performed on the whole case.” [*Lai Ling Cheng v. Modansky*, 73 N.Y.2d 454 (1989)](https://scholar.google.com/scholar_case?case=12544398279050035771). Do you agree with this conclusion? |

**Woke Up New: Permissive Withdrawal - Model Rule 1.16(b)**

*I wish there was something you would do or say, to try and make me change my mind and stay. But we never did too much talking anyway. But don't think twice, it's all right.*[[5]](#footnote-4)

*You can't open your mouth without telling a lie, but baby, you know how to say goodbye.*[[6]](#footnote-5)

*On the morning when I woke up without you for the first time, I felt free and I felt lonely and I felt scared.[[7]](#footnote-6)*

While it is easy for clients to end an attorney-client relationship, it can be harder for attorneys. Model Rule 1.16(b) identifies several circumstances under which an attorney may end an attorney-client relationship.

Of course, attorneys can end attorney-client relationships at will, when it will not harm their clients. Model Rule 1.16(b)(1). But this exception is largely irrelevant, because clients typically abhor reluctant attorneys, and clients who suffer no harm rarely file malpractice actions. Clients who can afford another attorney say good riddance, and clients who cannot are harmed.

Attorneys can also end an attorney-client relationship if their client misbehaves. For example, attorneys can end an attorney-client relationship if their client uses their legal advice to break the law. Attorneys can also end an attorney-client relationship based on irreconcilable differences of opinion. And attorneys can end an attorney-client relationship if their client cannot or will not pay for representation, or for any other “good reason.” Model Rule 1.16(b)(2-7).

However, attorneys cannot simply end an attorney-client relationship and walk away. They must seek permission from the court, and cannot end an attorney-client relationship without the court’s approval. If the court orders an attorney to continue representing a client, the attorney must comply, even if the attorney has good cause to withdraw. Model Rule 1.16(c). Typically, courts permit attorneys to withdraw only if they show that their client has retained other counsel or refuses representation. If the court permits withdrawal, the attorney must make a reasonable effort to protect the client’s interests. Among other things, the attorney must provide reasonable notice of withdrawal to the client, transfer documents and property to the client, and refund any unearned payments or fees. However, the attorney may retain documents relating to the client, to the extent permitted by law.

| **CHECK YOUR KNOWLEDGE** |
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| 1. Under Model Rule 1.16(b), which are the following circumstances where an attorney may end the attorney-client relationship? (more than one answer may be correct)    1. The client is annoying    2. The client used the lawyer’s services to commit fraud    3. The client insists on doing something the lawyer has a fundamental disagreement with    4. Continued representation of the client would result in an unreasonable financial burden to the attorney |
| 1. True or False: The attorney can retain all payments that the client gave him. |

**It’s Not You, It’s Me: Mandatory Withdrawal - Model Rule 1.16(a)**

*Are you out of love with me? Are you longing to be free? Do I drive you up a tree? Yeah! Oh, yeah! Do I drive you up the wall? Do you dread every phone call? Can you not stand me at all? Yeah! Oh, yeah!*[[8]](#footnote-7)

Under certain circumstances, attorneys *must* end an attorney-client relationship. Model Rule 1.16(a) provides that attorneys must withdraw if continued representation would cause a violation of the rules of professional conduct or some other law, their physical or mental condition materially impairs their ability to represent the client, or the client terminates representation.

Obviously, attorneys cannot represent clients seeking legal advice in furtherance of a criminal enterprise. For example, attorneys cannot provide legal advice that enables a client to commit or perpetuate fraud. However, attorneys are not required to withdraw from representation simply because their client suggests an improper or illegal action. [Model Rule 1.16, Comment 2.](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_16_declining_or_terminating_representation/comment_on_rule_1_16_declining_or_terminating_representation/) On the contrary, they should counsel their client against such action, and withdraw only if their client insists on proceeding.

Attorneys also cannot represent a client if it would create a conflict of interest. If an attorney has previously represented a client with interests adverse to those of a potential or current client, the attorney must decline or withdraw from representation, unless the client can and does provide informed consent to representation. In some cases, a conflict of interest may preclude informed consent.

Attorneys must also withdraw from representation if their physical or mental state will materially impair their ability to represent their client. Obviously, attorneys who incur serious physical or mental injuries may not be able to continue representing their clients. However, in some cases, they may be subject to discipline.

| [***Whiting v. Lacara*, 187 F. 3d 317 (2d Cir. 1999)**](https://scholar.google.com/scholar_case?case=11704918234329522591) |
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| **Summary:** Lacara appealed from two orders denying Lacara’s motion to withdraw as counsel for Whiting. Lacara asserted that appellee had failed to follow legal advice, was not focused on his legal rights, and demanded publicity against legal advice. Whiting said he would not be opposed to a court order relieving counsel. Lacara asserted permissive withdrawal. The court noted that there are some instances in which an attorney representing a plaintiff in a civil case might have to withdraw; even at the cost of significant interference with the trial court's management of its calendar. In reversing the decision of the lower court, this court noted that Whiting intended to dictate how his action is to be pursued. Whiting did not believe Lacara was the correct attorney for him. Based on the oral argument, the court determined Lacara’s motion should be granted. |

Garrett R. Lacara appeals from two orders of Judge Spatt denying Lacara's motions to withdraw as counsel for plaintiff-appellee Joseph M. Whiting. Although the record before Judge Spatt justified denial of the motions, amplification of Whiting's position at oral argument persuades us to reverse.

In July 1996, appellee, a former police officer, filed a civil rights action against Nassau County, the Incorporated Village of Old Brooksville, the Old Brooksville Police Department, other villages, and various individual defendants. The action was based on the termination of his employment as an officer. He sought $9,999,000 in damages.

Appellee's initial counsel was Jeffrey T. Schwartz. In October 1996, Robert P. Biancavilla replaced Schwartz. A jury was selected in October 1997 but was discharged when Biancavilla withdrew from the case with appellee's consent.

Whiting retained Lacara in December 1997. In June 1998, the district court partially granted defendants' summary judgment motion and dismissed plaintiff's due process claims. The court scheduled the remaining claims, one free speech claim and two equal protection claims, for a jury trial on August 18, 1998. On July 20, 1998, the district court denied appellee's motion to amend his complaint to add a breach of contract claim and another due process claim.

On August 6, 1998, Lacara moved to be relieved as counsel. In support, he offered an affidavit asserting that appellee "had failed to follow legal advice," that appellee "was not focused on his legal rights," and that appellee "demanded publicity against legal advice." Lacara also asserted that appellee had failed to keep adequate contact with his office, was "not sufficiently thinking clearly to be of assistance at the time of trial," and would "be of little or no help during trial." Furthermore, Lacara stated that appellee had "demanded that Lacara argue collateral issues which would not be allowed in evidence," demanded that Lacara continue to argue a due process claim already dismissed by the court, and drafted a Rule 68 Offer without Lacara's consent and demanded that he serve it on defendants. Finally, Lacara asserted that on July 30, 1998, Whiting had entered his office and, without permission, had “commenced to riffle Lacara's ‘in box.’” Lacara stated that he had to call 911 when Whiting had refused to leave the office. Lacara offered to provide further information to the court in camera. Whiting's responsive affidavit essentially denied Lacara's allegations. Whiting stated that he would not be opposed to an order relieving counsel upon the condition that Lacara's firm refund the legal fees paid by Whiting.

On August 13, Judge Spatt denied Lacara's motion to withdraw as counsel. Judge Spatt subsequently issued a written order giving the reasons for denying appellant's motion.

On August 13, 1998, Lacara filed a notice of appeal and moved for an emergency stay of the district court's order and to be relieved as appellee's attorney. We granted Lacara's motion for an emergency stay pending appeal but denied his request for relief on the merits at that time. At a status conference on September 23, 1998, the district court entertained another motion from Lacara to withdraw as counsel, which Judge Spatt again denied. Lacara filed a timely appeal, which was consolidated with the earlier appeal.

Judge Spatt denied Lacara's motion pursuant to Rule 1.4 of the Civil Rules of the United States District Court for the Southern and Eastern Districts of New York, which provides that:

an attorney who has appeared as attorney of record for a party may be relieved or displaced only by order of the court and may not withdraw from a case without leave of the court granted by order. Such an order may be granted only upon a showing by affidavit or otherwise of satisfactory reasons for withdrawal or displacement and the posture of the case, including its position, if any, on the calendar.

In addressing motions to withdraw as counsel, district courts have typically considered whether “the prosecution of the suit is likely to be disrupted by the withdrawal of counsel.”

Considerations of judicial economy weigh heavily in favor of our giving district judges wide latitude in these situations, but there are some instances in which an attorney representing a plaintiff in a civil case might have to withdraw even at the cost of significant interference with the trial court's management of its calendar. For example, the Code of Professional Responsibility might mandate withdrawal where "the client is bringing the legal action merely for the purpose of harassing or maliciously injuring" the defendant. In such a situation, by denying a counsel's motion to withdraw, even on the eve of trial, a court would be forcing an attorney to violate ethical duties and possibly to be subject to sanctions.

Lacara does not claim that he faces mandatory withdrawal. Rather, he asserts three bases for "permissive withdrawal" under the Model Code: (i) Whiting "insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law"; (ii) Whiting's "conduct has rendered it unreasonably difficult for Lacara to carry out employment effectively"; and (iii) Whiting has "deliberately disregarded an agreement or obligation to Lacara as to expenses or fees." Although the Model Code "was drafted solely for its use in disciplinary proceedings and cannot by itself serve as a basis for granting a motion to withdraw as counsel," we continue to believe that "the Model Code provides guidance for the court as to what constitutes ‘good cause' to grant leave to withdraw as counsel." However, a district court has wide latitude to deny a counsel's motion to withdraw, as here, on the eve of trial, where the Model Code merely permits withdrawal.

In the instant matter, we would be prepared to affirm if the papers alone were our only guide. Although Lacara has alleged a nonpayment of certain disputed fees, he has not done so with sufficient particularity to satisfy us that withdrawal was justified on the eve of trial. Moreover, there is nothing in the district court record to suggest error in that court's finding that "Whiting has been very cooperative and desirous of assisting his attorney in this litigation." To be sure, we are concerned by Lacara's allegation that appellee trespassed in his office and that appellant had to call 911 to get Whiting to leave. However, Whiting disputes Lacara's description of these events. Moreover, we strongly agree with the district court that, as the third attorney in this case, Lacara had ample notice that appellee was a difficult client.

Nevertheless, we reverse the denial of appellant's motion for withdrawal. Among Lacara's allegations are that Whiting insisted upon pressing claims already dismissed by the district court and calling witnesses Lacara deemed detrimental to his case. At oral argument, Whiting confirmed Lacara's contention that Whiting intends to dictate how his action is to be pursued. Whiting was asked by a member of the panel:

Are you under the impression that if we affirm Judge Spatt's ruling, you will be able to tell Mr. Lacara to make the arguments you want made in this case? That, if Mr. Lacara says, "That witness doesn't support your case," and you don't agree with that, are you under the impression that if we affirm Judge Spatt's ruling you'll be able to force him to call that witness?

To which Whiting replied, "Yes I am."

Moreover, in his statements at oral argument, Whiting made it clear that he was as interested in using the litigation to make public his allegations of corruption within the Brookville police department as in advancing his specific legal claims. For example, Whiting thought it relevant to inform us at oral argument that police officers in the department were guilty of "illegal drug use, acceptance of gratuities, and ongoing extramarital affairs while they were on duty." Appellee stated that he wanted to call an officer to testify that the officer could not "bring up anything criminal about the lieutenant, the two lieutenants, or the chief, which could get them in trouble or make the department look bad." Finally, Whiting made clear that he disagreed with Lacara about the handling of his case partly because Whiting suspects that Lacara wants to cover up corruption. Appellee stated: "For some strange reason, Mr. Lacara states that he doesn't want to put certain witnesses on the stand. The bottom line is he does not want to make waves and expose all of the corruption that's going on within this community."

Also, at oral argument, appellee continued to bring up the already-dismissed due process claims. He asserted: "They found me guilty of something which was investigated by their department on two separate occasions and closed as unfounded on two separate occasions." We thus have good reason to conclude that Whiting will insist that Lacara pursue the already dismissed claims at trial.

Finally, appellee indicated that he might sue Lacara if not satisfied that Lacara provided representation as Whiting dictated. After admitting that he did not consider Lacara to be the "right attorney" for him in this case, Whiting asserted that he deemed Lacara "ineffective." The following exchange also occurred:

Question from Panel: If you think that Mr. Lacara is ineffective in representing you as you stand here now, doesn't Mr. Lacara face the prospect of a malpractice suit, by you, against him, if he continues in the case?

Appellee's Reply: Yes, I believe he absolutely does.

Question from Panel: Then, isn't that all the more reason to relieve him? So that what you say is ineffective and is in effect a distortion of the attorney-client relationship, doesn't continue?

Appellee's Reply: I believe I do have grounds to sue Mr. Lacara for misrepresentation ....

We believe that appellee's desire both to dictate legal strategies to his counsel and to sue counsel if those strategies are not followed places Lacara in so impossible a situation that he must be permitted to withdraw.

Attorneys have a duty to the court not to make "legal contentions unwarranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law." We have determined that "an attorney who continues to represent a client despite the inherent conflict of interest in his so doing due to possible Rule 11 sanctions risks an ethical violation." In this case, appellee's belief that he can dictate to Lacara how to handle his case and sue him if Lacara declines to follow those dictates leaves Lacara in a position amounting to a functional conflict of interest. If required to continue to represent Whiting, Lacara will have to choose between exposure to a malpractice action or to potential Rule 11 or other sanctions. To be sure, such a malpractice action would have no merit. However, we have no doubt it would be actively pursued, and even frivolous malpractice claims can have substantial collateral consequences.

As previously noted, the interest of the district court in preventing counsel from withdrawing on the eve of trial is substantial. Moreover, we would normally be loath to allow an attorney to withdraw on the eve of trial when the attorney had as much notice as did Lacara that he was taking on a difficult client. However, the functional conflict of interest developed at oral argument causes us to conclude that the motion to withdraw should be granted.

We therefore reverse and order the district court to grant appellant's motion to withdraw as counsel. We note that Lacara agreed in this court to waive all outstanding fees and to turn over all pertinent files to Whiting.

| **CHECK YOUR KNOWLEDGE** |
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| 1. Why did Lacara claim permissive withdrawal, rather than mandatory withdrawal? |
| 1. Why did the district court deny Lacara’s motion to withdraw? Why did the circuit court reverse? |
| 1. How serious is the risk of Rule 11 sanctions? Is there a real conflict of interest? |
| 1. Will Whiting be able to retain new counsel? If not, will he have to proceed pro se? |

**Both Sides Now: Effective Withdrawal**

*I've looked at life from both sides now, from win and lose and still somehow, It's life's illusions I recall I really don't know life at all.*[[9]](#footnote-8)

Sometimes an attorney-client relationship doesn’t really end, but just fades away. Often, an attorney represents a client in a matter and the client has no need for further representation. For example, an attorney may represent a client in relation to a particular transaction or dispute, like the purchase of a home or an automobile accident. Ideally, the attorney and client will have formed an agreement, specifying the scope of representation, in which case the attorney-client relationship typically ends when the matter is concluded. But occasionally they may not, by accident or design. In that case, the attorney-client relationship still typically ends when the matter is concluded, although it may be less certain. Restatement (Third) of the Law Governing Lawyers § 31(2)(e) (2000).

In other cases, an attorney may have a long-term relationship with a client that gradually peters out over time. In that case, it may be hard to know whether and when the attorney-client relationship has ended. Worse, the attorney and client may disagree. An attorney may believe the relationship continues, only to be surprised when the client returns bills unpaid. And a client may believe the relationship continues, only to be surprised when the attorney ignores the client’s affairs.

Generally, an attorney-client relationship continues to exist so long as a **reasonable client** would believe that it continues to exist. If an attorney wants to end an attorney-client relationship, the attorney should *explicitly* inform the client in writing that it has ended, and return any documents or property that belongs to the client. But attorneys are often reluctant to end long-term attorney-client relationships, in the hope that the client will eventually return and provide more business. In that case, courts will ask whether a reasonable client would believe that an attorney-client relationship continued to exist under the circumstances.

| **CHECK YOUR KNOWLEDGE** |
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| 1. True or False: The standard for determining whether an attorney-client relationship has ended is that of a reasonable attorney. |
| 1. True or False: An attorney must explicitly convey to the client that the relationship has ended. |

**Forever & a Day: Duties After Withdrawal**

Under Model Rule 1.16(d), an attorney who withdraws from representing a client has a duty to minimize any potential harm to the client. Among other things, the attorney must provide reasonable notice of withdrawal, return any documents or other property that belongs to the client, and refund any unearned fees or payments. However, some attorney work product may belong to the attorney, and some states permit attorneys to retain the client’s property until the client pays any outstanding fees.

However, the attorney also has a permanent duty of confidentiality to former clients.

**Further Reading:**

1. The Doors, *The End* (1967). [↑](#footnote-ref-0)
2. Leo Tolstoy, *Anna Karenina* (1878). [↑](#footnote-ref-1)
3. Dolly Parton, *When Someone Wants to Leave*, Jolene (1974). [↑](#footnote-ref-2)
4. Billy Bragg, *A New England* (1983). [↑](#footnote-ref-3)
5. Bob Dylan, *Don’t Think Twice, It’s Alright* (1963). [↑](#footnote-ref-4)
6. Stephin Merritt, *How to Say Goodbye*, 69 Love Songs (1999). [↑](#footnote-ref-5)
7. The Mountain Goats, *Woke Up New*, Get Lonely (2006). [↑](#footnote-ref-6)
8. Stephin Merritt, The Magnetic Fields, *Yeah! Oh Yeah!*, 69 Love Songs (1999). [↑](#footnote-ref-7)
9. Joni Mitchell, *Both Sides Now*, Clouds (1969). [↑](#footnote-ref-8)