

Withdrawal from Employment [DR 2-110]

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Just as the code regulated the formation of attorney-client relationships, it also spells out the proper procedures for withdrawal from the representation of a client. Moreover, the attorney must take whatever steps are necessary to avoid foreseeable prejudice to the rights of her client. While in some instances, as delineated by DR 2-1 10(b), withdrawal may be mandatory, withdrawal is permissible in a host of scenarios.¹

DR 2-110 [§1200.15] Withdrawal from Employment

(A) In general.

(1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) Even when withdrawal is otherwise permitted or required under section DR 2-1 1 0 [1200. 1 5] (A)(1), (B) or (C), a lawyer shall not withdraw from employment until the lawyer has taken steps to the extent reasonably practicable to avoid foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled and complying with applicable laws and rules.

(3) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(B) Mandatory withdrawal. A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

(1) The lawyer knows or it is obvious that the client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken, merely for the purpose of harassing or maliciously injuring any person.

(2) The lawyer knows or it is obvious that continued employment will result in violation of a Disciplinary Rule.

(3) The lawyer's mental or physical condition renders it unreasonably difficult to carry out the employment effectively.

(4) The lawyer is discharged by his or her client.

(C) Permissive withdrawal. Except as stated in DR 2-110 [1200.15] (A), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

(1) The client:

(a) 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.

(b) Persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent.

(c) Insists that the lawyer pursue a course of conduct, which is illegal or prohibited under the Disciplinary Rules.

(d) By other conduct renders it unreasonably difficult for the lawyer to carry out employment effectively.

(e) Insists, in a matter not pending before a tribunal, that the lawyer engage in conduct, which is contrary to the judgment and advice of the lawyer but not prohibited under the Disciplinary Rules.

(f) Deliberately disregards an agreement or obligation to the lawyer as to expenses or fees.

(g) Has used the lawyer's services to perpetrate a crime or fraud.

(2) The lawyer's continued employment is likely to result in a violation of a Disciplinary Rule.

(3) The lawyer's inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal.

(4) The lawyer's mental or physical condition renders it difficult for the lawyer to carry out the employment effectively.

(5) The lawyer's client knowingly and freely assents to termination of the employment

(6) The lawyer believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

¹ *Dillon v. Otis Elevator Co.*, 2005 NY Slip Op 06173 (1st Dep't July 28, 2005) (A personal injury defendant refused to cooperate with its own lawyers in its defense. The attorneys were assigned through the defendant's insurer; the lawyers' motion to withdraw was properly granted, pursuant to N.Y. code Prof. Resp. DR 2-110, N.Y. Comp. Codes R. & Regs. tit. 22, §1200.15(C)(1)(iv).)