

GUIDELINE 11: WITHDRAWAL FROM REPRESENTATION

General

Rule Reference: Rule 3.08

1. A client may end the paralegal-client relationship at any time and for any reason. A paralegal is subject to certain restrictions in ending the paralegal-client relationship. Whether the paralegal has good cause for withdrawal will depend on many factors, including
 - the nature and stage of the matter,
 - the relationship with the client,
 - the paralegal's expertise and experience, and
 - any harm or prejudice to the client that may result from the withdrawal.
2. Rule 3.08 specifies a paralegal's obligations when withdrawing legal services. It sets out situations in which the paralegal
 - may choose to withdraw (*optional withdrawal*),
 - must withdraw (*mandatory withdrawal*), and
 - must comply with special rules (*withdrawal from quasi-criminal and criminal cases*).
3. To avoid misunderstandings, it will be helpful for the paralegal to explain to the client, at the beginning of the relationship
 - that all documents to which the client is entitled be provided will be returned to the client when their relationship ends or the matter concludes, and
 - which documents in the file will belong to the paralegal, so that they will be kept by the paralegal when their relationship ends or the matter is finished.
4. To ensure that the client understands these details, the paralegal should consider including them in his or her engagement letter or retainer agreement.
5. When the paralegal withdraws, he or she is subject to restrictions relating to the disclosure of client information. This would restrict the paralegal from revealing the reason for withdrawing to a *successor* (a paralegal or lawyer who accepts the client's matter after the original paralegal has withdrawn). Refer to Guideline 8: Confidentiality for further information on this subject.

Optional Withdrawal

Rule Reference: Rule 3.08(2), (3), (4), (6), (7), (8) & (9)

6. During a retainer, a situation may arise that will allow the paralegal to withdraw from representing the client.
7. A *serious loss of confidence* means that the paralegal and the client can no longer trust and rely on each other, making it impossible to have a normal paralegal-client relationship. An example would be where the client deceives or lies to the paralegal. Another example would be where the client refuses unreasonably to accept and act on the paralegal's advice on an important point.
8. If the retainer relates to a criminal or quasi-criminal matter, the paralegal must ensure that he or she complies with the special rules relating to withdrawal in those types of cases (refer to section entitled "Withdrawal From Quasi-Criminal and Criminal Cases" at (iv)).

Mandatory Withdrawal

Rule Reference: Rule 3.08(5), (7), (8) & (9)

9. In certain situations, a paralegal is required to withdraw from representing a client, even if the paralegal or the client wishes to continue with the retainer.

Withdrawal From Criminal or Quasi-Criminal Matters

Rule Reference: Rule 3.08(7), (8) & (9)

10. Whether a paralegal may withdraw in these types of matters, has to do with the amount of time between *the withdrawal* (the date and time the paralegal intends to stop representing the client) and *the trial* (the date and time the client's trial begins).
11. Generally, the amount of time between the withdrawal and trial must be sufficient to allow the client to hire another representative and the new representative to prepare properly for trial.
12. While the *Rules* do not require the paralegal to make an application to the court to be removed as the client's representative, most rules of court do. Therefore, the paralegal should consult the rules of the court to determine what process is to be followed. The paralegal must not tell the court or the prosecutor the reasons for withdrawal, unless disclosure is justified in accordance with the *Rules*.
13. The paralegal may seek to adjourn the trial to give the client or the new representative more time to prepare, as long as the adjournment does not prejudice the client.

Manner of Withdrawal

Rule Reference: Rules 3.08 (10) and (11)

14. Where a paralegal withdraws from representation of a client, the required manner of withdrawal is set out in subrules 3.08(10 and (11).

Duties of the Successor Paralegal

Rule Reference: Rule 3.08 (12)

15. If a client who was represented by another paralegal or a lawyer contacts a paralegal, that paralegal has obligations as the *successor paralegal*.

Written Confirmation

16. If a paralegal's services are terminated while the client's matter is ongoing and the client requests that the matter be transferred to a new paralegal or lawyer, the paralegal should confirm, in writing, the termination of the retainer. The paralegal should also obtain a *direction*, signed by the client, for release of the client's file to a successor paralegal or lawyer. A *direction* is a written document instructing the paralegal to release the file to the successor paralegal or lawyer. If the file will be collected by the client personally, the paralegal should obtain a written acknowledgement signed by the client, confirming that the client has received the file.