Ethical Withdrawal When a Client Discloses Attorney Communications

QUESTION:

A lawyer's client has informed the lawyer that the client routinely discloses excerpts and summaries of their communications with the lawyer, either in conversations with acquaintances or onto the client's social media platforms. The lawyer has advised the client that sharing information about those conversations, particularly by posting them online where the client has limited ability to control their dissemination and potentially no knowledge of who is reviewing them, may waive the attorney-client privilege and potentially damage the client's case. The client refuses, arguing that their social media settings are set to "friends only" and that sharing their communications is the client's decision to make. The lawyer remains concerned and has advised the client that continued disclosure of attorney communications may cause the lawyer to withdraw from the representation.

Does the lawyer need to withdraw?

DISCUSSION

Clients may not appreciate the risks associated with sharing attorney-client communications, particularly to social media platforms. Lawyers should consider advising clients, preferably at the outset of the representation, that sharing information about the representation, including posting, blogging or otherwise sharing that information with others may jeopardize confidentiality, undermine attorney-client privilege, and create evidence that must be preserved, collected, and produced in discovery during litigation.

Under Rule 1.16(a), a lawyer shall withdraw from a representation if continuing the representation would cause the lawyer to violate the Rules of Professional Conduct or other law. While a client's decision to ignore a lawyer's warnings does not, on its own, mandate withdrawal, the lawyer may still consider whether permissive withdrawal is appropriate.

Under Rule 1.16(b), a lawyer may withdraw from representing a client if:

> (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…has been rendered unreasonably difficult by the client; or
> (7) other good cause for withdrawal exists.

Having provisions in the engagement agreement covering potential friction points with the client, including the client's social media use, may help avoid the necessity of withdrawal. Recent ABA Formal Opinion 523 *Engagement Agreements Allowing a Lawyer to Withdraw When the Client Fails Substantially to Fulfill an Obligation Regarding the Lawyer's Services* (May 20, 2026) provides guidance regarding a lawyer's ability to use an engagement agreement to establish explicit client obligations that can form a basis for withdrawal if breached. Within the bounds of the Rules of Professional Conduct, the opinion concludes that a lawyer may formalize explicit

client obligations in the engagement agreement that are not otherwise implicit, such as a provision in which the client agrees not to make an audio or video recording of communications with the lawyer, or agrees not to discuss the lawyer or the matter on social media during the course of the representation. *Id.* at p. 3.

Regardless of whether an obligation is made explicit in the engagement agreement or left implicit, a lawyer may withdraw, after providing reasonable warnings, if the client substantially fails to cooperate or engages in behavior that frustrates the lawyer's ability to conduct the representation effectively or ethically,

If a lawyer does decide to withdraw, a lawyer's right to withdraw is qualified by Rules 1.16(c) and (d). Under Rule 1.16(c), if a matter is in litigation, the lawyer must seek court permission to withdraw. The court retains the ultimate discretion to grant or deny this request. Rule 1.16(c) provides:

> (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.

A lawyer must also take reasonable steps to protect the client's interest before terminating the representation. Rule 1.16(d) provides:

> (d) 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.