

Final

**Rhode Island Supreme Court
Ethics Advisory Panel Op. 2023-6
Issued September 14, 2023**

FACTS

The inquiring attorney was retained by a client in 2020 to assist the client with drafting and submitting an application for a zoning variance. The inquiring attorney coordinated a surveyor for the client and prepared the application. He also met with the client five (5) times between June 30, 2020 and November 20, 2020 in connection with the matter. The inquiring attorney forwarded the completed application to the client for final review and approval in January 2021; however, the client left the country and never approved the application. The inquiring attorney believes the application is now stale due to the time that has passed since its initial drafting. He reports that he has informed the client of his desire to withdraw from and terminate his representation of the client and has offered to provide the client with a refund of unearned fees, but the client has refused and wants the inquiring attorney to remain on the matter. To this end, the client scheduled a meeting with the inquiring attorney for June 30, 2023 but did not keep the appointment.

ISSUE PRESENTED

The inquiring attorney asks whether it is permissible for him to withdraw from and terminate his representation of the client under the circumstances described herein.

OPINION

It is the Panel's opinion that the inquiring attorney may withdraw from and terminate his representation of the client under the circumstances described herein because, based on the facts presented, his withdrawal will not have a material adverse effect on the client's interests; provided, that the inquiring attorney must first satisfy his obligation to mitigate the consequences of termination before withdrawing.

REASONING

Rule 1.16 sets forth the applicable standard with regard to the question of withdrawal from and termination of representation:

(a) 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.

(b) 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.

(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.

(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.

Here, the inquiring attorney's withdrawal from and termination of his representation of the client will not have a material adverse effect on the client's interests. The inquiring attorney has completed the zoning variance application for which he was engaged by the client. The matter is not pending or impending because the application was never reviewed or approved by the client or submitted to the relevant zoning authority. Whatever staleness from which the application may suffer is the result of the client's own actions. Therefore, the client will not be hindered or prejudiced by the inquiring attorney's withdrawal should he choose to pursue the matter further.

Notwithstanding, the Panel urges the inquiring attorney to take all reasonable steps pursuant to Rule 1.16(d) to mitigate the consequences to the client of his withdrawal before terminating representation. The inquiring attorney has already offered to refund the client unearned fees and has informed the client of his intention to terminate representation. He must also permit the client sufficient time to select replacement counsel and return the client's papers and property. Additional mitigation steps may also be necessary based on the particular circumstances of the matter. See Hazard, Hodes, Jarvis, and Thompson, *The Law of Lawyering*, § 21.18 n. 56, pg. 34 (2023).