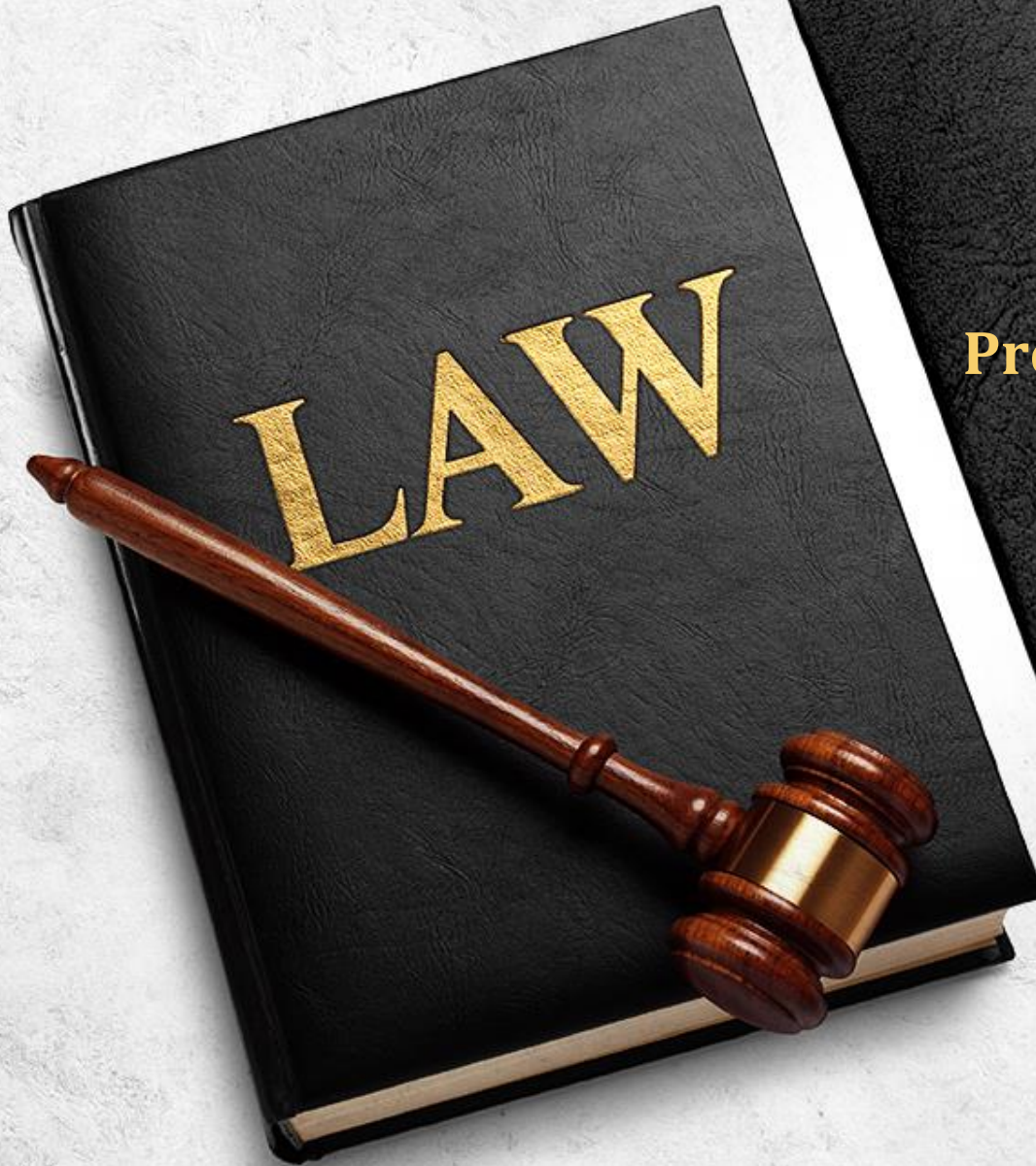


Legal Ethics

Lecture 06

Prof. Marvin Longabaugh

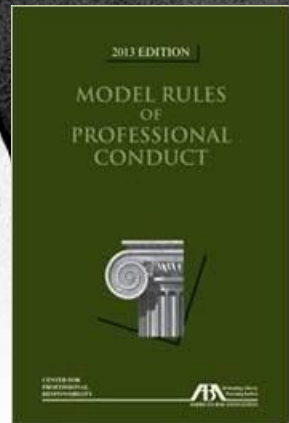
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MRPC 1.16

Declining or Terminating Representation

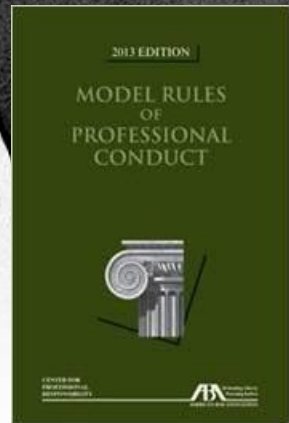
- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
 - (1) the representation will result in violation of the rules of professional conduct or other law;
 - (2) the lawyer's physical 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;



MRPC 1.16

Declining or Terminating Representation

- (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.



Mandatory Withdrawal from a Case

- The attorney **MUST** withdraw if:
 - Continued representation will result in a violation of:
 - any of the other Rules of Professional Conduct
 - any state or federal law
 - The attorney is no longer able to serve the client competently, because of a physical or mental condition or because the attorney lacks the requisite skill to competently represent the client's interest
 - The attorney is fired by the client



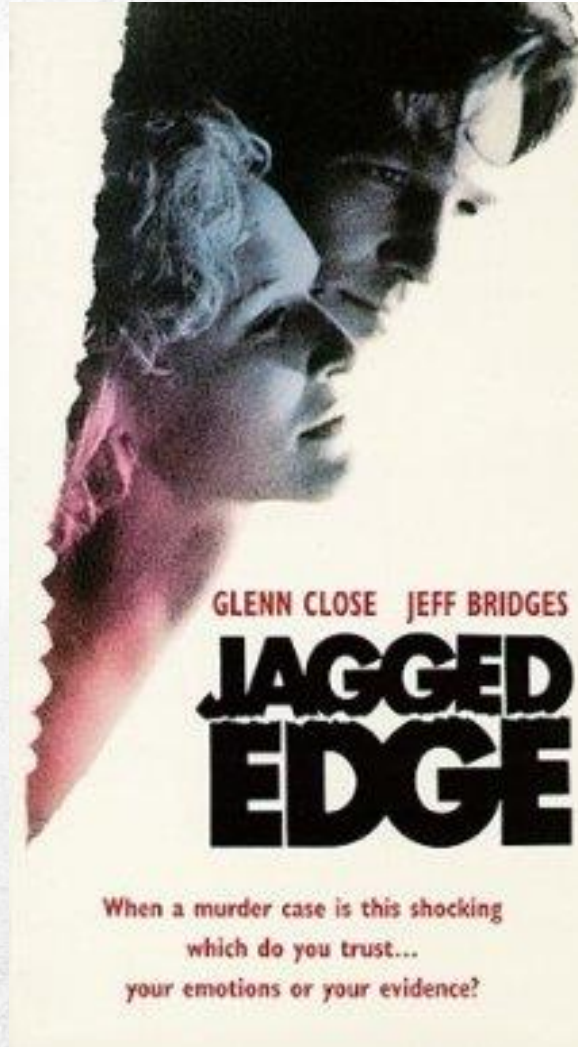
Permissive Withdrawal from a Case

- The attorney MAY withdraw if:
 - The client is committing criminal or fraudulent actions, using the attorney's services
 - The client has used the attorney's services to commit a crime or fraud
 - The client insists on pursuing a legal strategy or action that is either
 - illegal
 - immoral, or
 - unwise in achieving the client's interests
 - The client refuses to live up to his or her obligations toward the attorney (usually money)
 - The representation is very difficult for the attorney for financial reasons
 - The representation has been made very difficult by client non-cooperation
 - Other "good cause" to withdraw (moral repugnance)



Jagged Edge (1985)

M_Jagged_16



Withdrawal Without Consent of Court

- **Should a lawyer be permitted to withdraw from a case that has become financially unprofitable for the lawyer to pursue?**
- A lawyer may withdraw for nonpayment of fees if the lawyer has given the client reasonable warning.
 - Rule 1.16(b) Except as stated in paragraph (c), 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 will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client;
- Courts agree that lawyers are entitled to be paid, but may not prejudice their client's case in seeking payment.



Liens and Other Security Interests

- **Should a lawyer be permitted to retain a client's property and papers until the lawyer's fee is paid?**
- The Model Rules basically throws the lawyer back to the applicable law of attorneys' liens.
 - Rule 1.16(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.
- Thus, the attorney is allowed to put pressure on a client by holding client files to secure payment of the fee.



Other Considerations Involved in Withdrawing from a Representation

- May not withdraw if the court does not allow the withdrawal (e.g., it's in the middle of the case and withdrawing will irreparably hurt the client).
- When withdrawing in any case, the attorney must:
 - Give a reasonable amount of notice, allowing time to get together replacement counsel
 - Return anything rightfully belonging to the client, such as unused expense money
 - Handing over all files relating to the representation to the client or new counsel
 - NOTE: Some states allow counsel in a civil matter to retain the file until they are paid for their work



Other Considerations Involved in Withdrawing from a Representation

- When selling a law practice (with representation of clients), but:
 - The new firm must be practicing in the same area of law and geography
 - The client must be made aware of the sale and has the right to get new counsel and to any other relevant information regarding the transaction



Quick Quiz



End Of Class Review Quiz

12

**THE
BIG
QUIZ**



The End

