

Breaking Up Is Hard to Do – When a Judge Won't Let You Withdraw from a Representation

Pursuant to SCR 20:1.16(c), a judge can order a lawyer to stay on a case, notwithstanding good cause for withdrawal. In such situations, what's a lawyer to do? A recent opinion from the U.S. District Court of the District of Massachusetts touches on the difficulties a lawyer can face when trying to withdraw and offers guidance on how to carry out the representation if the motion is denied.

BY SARAH E. PETERSON

Question

I'm assigned counsel for a client facing numerous felony counts and exposure to many years in prison. I want to help him. I really do. But he thwarts every effort I make. He argues with me about everything. A couple weeks ago he mailed me a letter demanding that I file two motions on his behalf. Despite previously explaining to him that the motions would be frivolous, I wrote back and again explained why I could not file the motions on his behalf. The last straw for me was when I learned he had filed pro se one of the motions I refused to file. A few days later, I filed a motion to withdraw.

Although the judge acknowledged my frustration and directed my client to not file any other pro se motions, he ordered me and my client to "work things out" and set a status conference one month out. That status conference is next week, and my relationship with my client has not improved. I filed another motion to withdraw, but I'm worried the judge won't let me out because the trial date is quickly approaching. What do I do?

Answer

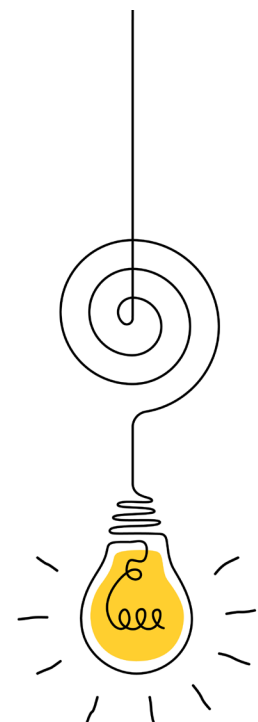
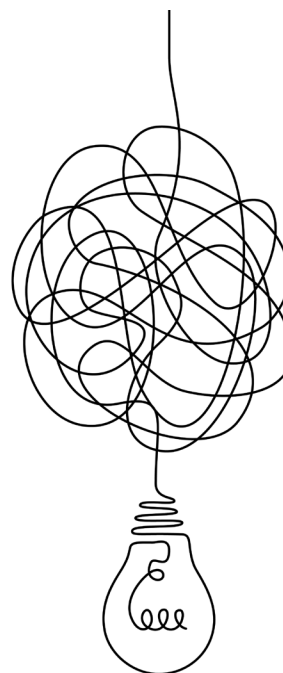
We get lots of calls from lawyers wanting to withdraw from representations and wanting to do it ethically. At the end of most of those calls, I usually point lawyers to SCR 20:1.16(c) and remind lawyers that the judge has the last word on motions to withdraw. Occasionally the lawyer calls me back after their motion to withdraw was denied, seeking advice as to how to proceed.

Given how thin courts are spread and the dearth of lawyers in Wisconsin, especially those willing to take State Public Defender (SPD) assignments, this seems to be a growing concern.

An April 2025 memorandum and decision from the U.S. District Court for the District of Massachusetts illustrates how difficult it can be to withdraw from a case and how difficult it can be to navigate the representation after your request to withdraw is denied.¹ In that case, a criminal defendant maintained an



Sarah E. Peterson, U.W. 2000, is ethics counsel with the State Bar of Wisconsin. Ethics question? Call the Ethics Hotline at (608) 229-2017 or (800) 254-9154. Access the digital article at www.wisbar.org/wl. speterson@wisbar.org



acrimonious relationship with several lawyers appointed to represent him. The first lawyer lasted several months before successfully moving to withdraw. The next appointed lawyer lasted two weeks. The third lawyer lasted 14 months before moving to withdraw. The court then reappointed the first lawyer. He withdrew again a few months later. The court then appointed the lawyer at the center of this epic tale.

The lawyer was appointed to represent the defendant in November 2024. He first moved to withdraw in March 2025, asserting he was required to do so.² The court denied his motion without prejudice. Several weeks later, the lawyer renewed his motion, explaining that the defendant's instructions to the lawyer to engage in unethical behavior had created a conflict, which mandated withdrawal. The lawyer noted that the relationship had grown contentious and the defendant was undermining the representation by controlling which pleadings were filed in the case. The court found that the defendant had waived his right to new counsel and so offered the defendant the option to continue being represented by the lawyer

or proceeding pro se. The defendant declined to accept either alternative. The court then took the pending motion under advisement.

In declining to allow the lawyer to withdraw, the court noted that the motion implicated the defendant's right to counsel and stated that withdrawal would not be allowed absent good cause.

While the court didn't explain what would constitute good cause, it found that the lawyer's three stated reasons for believing he was required to withdraw – that the defendant had repeatedly accused the lawyer of being ineffective, had attempted to coerce the lawyer into engaging in unethical behavior, and, as a result, the lawyer and the defendant suffered an irretrievable breakdown in communication – did *not* constitute good cause.

In explaining the reasons for denying the lawyer's motion, the court stated that being demeaned or even vilified by a defendant is not grounds for withdrawal. Furthermore, the court found that the client's demands that the lawyer engage in ethical misconduct, while serious, did not create a "true conflict

of interest." Citing Massachusetts Rule of Professional Conduct 1.2(a),³ which requires that lawyers seek only a client's ethical and lawful objectives, the court reasoned that the lawyer should, after consultation with the client, file only those pleadings the lawyer believed were warranted and ethical and ignore the client's demands. Despite the "undoubtedly strained" relationship between the lawyer and the client, the court expressed confidence that the lawyer had "the professional capacity and competence to work through this difficult situation." Finally, the court voiced its concern with the timing of the motion to withdraw. The defendant had requested a speedy trial but his demands upon counsel had caused multiple continuances of the trial and "unconscionable" delay. The court noted that the defendant couldn't have it both ways.

For those of you who are curious, the lawyer filed another motion to withdraw in September 2025. He was allowed to withdraw but was ordered to serve as standby counsel.⁴ The lawyer later moved to withdraw as standby counsel. That motion was denied. The defendant proceeded pro se at his trial in January 2026 and was convicted on all counts.

Three important issues. While this decision might seem extreme, it addresses three important issues.

First is the high bar set by some courts in reviewing motions to withdraw. As this case shows, a lawyer should be prepared to clearly delineate the reason for seeking withdrawal if

RESIDENTIAL REAL ESTATE LITIGATION



DANIEL W. STEVENS & RUDOLPH J. KUSS

46 Years Combined Experience
Consumer Law ■ Contingency Fee
Combined 260 Jury Trials in 21 Counties



Cases Involving:

- Home Sellers
- Builders
- House Sinking
- Brokers
- Building Inspectors
- Contamination
- Contractors
- Home Inspectors
- Nuisances
- Repairmen
- Basements
- Contracts
- Remodelers
- Septic Systems
- Boundaries
- Surveyors
- Roofs
- Warranties
- Appraisers
- Mold
- Engineers
- Yard Flooding

STEVENS & KUSS, S.C.

1025 S. Moorland Road, Suite 502 • Brookfield, WI 53005
262.251.5700 • Fax 262.251.4894 • www.stevensandkuss.com

askUs
WWW.WISBAR.ORG/WL

QUESTIONS about ethics or practice management? Confidential assistance is a phone call or click away:

Ethics Hotline: (800) 254-9154, or (608) 229-2017, 9 a.m. to 4 p.m., Monday through Friday.

Formal Ethics Opinions: www.wisbar.org/ethop

Practice411™: (800) 957-4670, or practicehelp@wisbar.org

ordered to do so by the court.⁵

Second is the importance of understanding the division of authority in decision-making between the lawyer and

the client, along with the importance of a lawyer maintaining that division, even if, after consultation, a client disagrees with the lawyer's decision.⁶

Third is the increasing focus on judicial efficiency and the effects that focus might have on a court's willingness to grant motions to withdraw. **WL**

ENDNOTES

¹*United States v. Merchia*, No. 1:22-cr-10355-NMG (D. Mass.).

²In Wisconsin, SCR 20:1.16(a) requires that a lawyer withdraw from a representation 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.

³SCR 20:1.2(a) differs substantially from the Massachusetts rule. It reads:

"Subject to pars. (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by SCR 20:1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case or any proceeding that could result in deprivation of liberty, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify."

While Wisconsin's rule does not specifically reference a lawyer's duty to seek only a client's lawful and ethical objectives, other Wisconsin rules make it clear that the same obligation exists in Wisconsin. For example, SCR 20:3.1 prohibits a lawyer from knowingly advancing a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good-faith argument for an extension, modifi-

cation, or reversal of existing law. SCR 20:1.2(d) states that a lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent.

⁴For a discussion of the ethical duties of stand-by counsel, see *Ethical Dilemmas: Ethical Responsibilities of Stand-by Counsel*, InsideTrack (April 20, 2016), <https://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=8&Issue=8&ArticleID=24781>.

⁵For a thorough discussion of what information should and should not be included in a motion to withdraw itself, see ABA Formal Opinion 519, which concludes that unless an explicit exception to the confidentiality rule (SCR 20:1.6) applies or the client provides informed consent to the disclosure of the information, the lawyer may not reveal "information relating to the representation" in support of a withdrawal motion. The opinion recommends a lawyer proceed as follows: begin with a motion citing only "professional considerations" or similar language; if further information is sought, assert all nonfrivolous claims of confidentiality; and, if ordered to disclose, do so in the narrowest possible manner. Although it is not clear from the memorandum and decision in this case, it is quite possible the lawyer included more information in his motion to withdraw than he should have.

⁶In Wisconsin the client decides the objectives and the lawyer decides the means. SCR 20:1.2(a). However, it is not always clear what constitutes an objective and what constitutes a means. **WL**

Motor Vehicle Crashworthiness

Since we opened our doors in 1979, Murphy & Prachthausen has been an advocate for safer products and practices. We have been nationally recognized for successfully litigating cases against corporations that design or manufacture defective vehicles, causing serious injuries. Such defects, to name a few, include faulty air bags, car roofs, seat belts, seats, park to reverse, and gas tanks.

In a case involving a defective vehicle, it is crucial that victims work with attorneys who are experienced in vehicle defect and crashworthiness cases. If you have a case involving a vehicle defect, we can work with you to provide mutual benefit to your client.

Please contact attorney

Thadd Llauro, Michelle Hockers, or Kate Llauro Scheidt
(414) 271-1011 | murphyprachthausen.com

**Murphy &
Prachthausen**
ATTORNEYS AT LAW

MILWAUKEE | GREENFIELD | WAUKESHA | MEQUON | WEST BEND

