



Dear Ethics Lawyer™

The Legal Ethics Project. Supporting professionalism with information.

Q: Dear Ethics Lawyer,

I have represented a client in litigation who has become very difficult. The client has admitted to withholding relevant documents that should be produced in discovery, and has instructed me not to acknowledge it or reveal it to the other side or the court. In addition, based upon conversations I've had privately with the client, I believe the client has been untruthful in deposition testimony, but refuses to correct that testimony. And to compound matters, the client has not paid our billings in six months.

I believe that I am required to withdraw from the representation under our state's version of Rule 1.16(a)(1) and that I have a basis for permissive withdrawal under Rule 1.16(b)(2),(3),(4),(5) and (6). The client refuses to consent to the withdrawal. So how much of this can I put in the motion to withdraw in order to obtain court approval? I am mindful of the need to preserve client confidentiality under Rule 1.6, but continuing to represent this client would put me at serious risk of violating the law and the rules of professional conduct, and having the opposing party accuse me of conduct giving rise to liability.

A: Without client consent, the question of what lawyers may reveal to support a motion to withdraw, in the balance between Rule 1.6 confidentiality and the requirements of Rule 1.16 (and other rules) in connection with both withdrawal and avoidance of participation in client misconduct, is very complicated. Recent ABA guidance, Formal Op. 519, Disclosure of Information Relating to the Representation in a Motion to Withdraw From a Representation (Dec. 3, 2025) illustrates the difficulty inherent in a variety of circumstances, including those you cite. It reaffirms the primacy of Rule 1.6 confidentiality obligations, even applied to disclosures to courts to support a motion to withdraw and even in cases where Rule 1.16 or other rules require ("a lawyer...shall withdraw") withdrawal, except to the limited extent that Rule 1.6(b) permits. Any disclosure in support of withdrawal made without the client's informed consent, must be "narrowly tailored," "protective of the client's interests," and "within the scope of an applicable exception" to Rule 1.6, *Id.* at 1. Formal Op. 519 reviews the parameters of the few applicable exceptions to Rule 1.6.

In the scenario you describe, consider whether the client is using your services as a lawyer to commit a crime or type of fraud that falls within the exception contained in Rule 1.6(b)(2) or (3) in the applicable jurisdiction. If so,

consider the minimum necessary disclosure you could make, and first counsel the client about the potential consequences of any disclosure and what the client can do to correct the situation and/or permit your withdrawal so as to ameliorate the need for a disclosure. You would also be wise to obtain your own legal advice about the matter, as authorized by Rule 1.6(b)(4).

Rule 1.6(b)(6) also provides an exception to confidentiality “to comply with other law or a court order.” Many jurisdictions have court rules or other law that sets forth what must or may be disclosed in connection with a motion to withdraw. This may be a source of authority to permit some level of disclosure to a court to justify withdrawal. Rule 1.6(b)(6) also gives rise to a complicated multi-step approach recommended in Formal Op. 519, an element of which is to rely upon an order of the court (if forthcoming) to make any necessary supporting disclosure.

We advise that a lawyer seeking to withdraw, whether under Rule 1.16(a) or Rule 1.16(b), should proceed as follows:

1. Initially submit a motion providing no confidential client information apart from a reference to “professional considerations” or “irreconcilable differences”;
2. Upon being informed by the court that further information is necessary, respond, when practicable, by seeking to persuade the court to rule on the motion without requiring the disclosure of confidential client information, asserting all non-frivolous claims for maintaining confidentiality consistent with Rule 1.6(a) and for protecting the attorney-client privilege;
3. If that fails and the lawyer is nonetheless ordered to submit information by the court—thereby involving Rule 1.6(b)(6)’s exception—do so only to the extent “reasonably necessary” to satisfy the needs of the court and preferably by whatever restricted means of submission are available, such as in camera review, under seal, or such other procedures designated to minimize disclosure as the court determines is appropriate; and
4. If the court does not order the lawyer to disclose but states that the motion to withdraw will be denied unless the lawyer provides more information, the lawyer remains bound by the duty of confidentiality and should remind the judge that, absent an order from the court, the lawyer is obligated to maintain the confidentiality of the information. In doing so, the lawyer should also request that, if the court does order the lawyer to disclose, the court require the lawyer to disclose only so much information protected by Rule 1.6 as is necessary and allow the lawyer to make those disclosures in camera, or submitted under seal so as to minimize harm to the client’s interests.

The Ethics Lawyer

About Dear Ethics Lawyer

The twice-monthly "Dear Ethics Lawyer" column is part of a training regimen of the Legal Ethics Project, authored by [Mark Hinderks](#), former managing partner and counsel to an AmLaw 132 firm; Fellow, American College of Trial Lawyers; and speaker/author on professional responsibility for more than 25 years. Mark leads Stinson LLP's [Legal Ethics & Professional Responsibility](#) practice, offering advice and "second opinions" to lawyers and law firms, consulting and testifying expert service, training, mediation/arbitration and representation in malpractice litigation. The submission of questions for future columns is welcome: please send to mark.hinderks@stinson.com.

Discussion presented here is based on the ABA Model Rules of Professional Conduct, but the Model Rules are adopted in different and amended versions, and interpreted in different ways in various places. Always check the rules and authorities applicable in your relevant jurisdiction – the result may be completely different.