OPD OFFICE OF THE PARENT DEFENDER

TUESDAY'S TIP # 20 – TO WITHDRAW OR NOT TO WITHDRAW…

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Situation: You've been confirmed as your client's court appointed attorney. You're at a hearing but your client doesn't show up. Or you haven't heard from your client in a while. What do you do?

The Problem: This scenario falls into two categories: 1) You've talked to the client, you expected the client, but the client isn't present, so you've got an empty chair next to you. 2) Your client hasn't responded to any contact from you in "a while."

Law: An attorney's withdrawal from a case requires: (1) justifiable cause, (2) reasonable notice to the client, and (3) the permission of the court. Therefore, a court may not allow the appointed attorney to withdraw (or remove the attorney) in either scenario described above. An attorney may not withdraw from a case without giving the client prior written notice that they will seek to withdraw. *In re K.M.W.*, 376 N.C. 195, 851 S.E.2d 849 (2020).

> Scenario 1. Under Rules 1.2 and 1.4 of the NC Rules of Professional Conduct, a client may authorize the attorney to take specific action on the client's behalf without further consultation. See *Harris v. Ray Johnson Constr. Co.,* 139 N.C. App. 827, 534 S.E.2d 653 (2000). It is within your discretion to determine if you have sufficient guidance from your client to represent them without their presence.
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> Scenario 2. In dependency cases, the State Bar has opined that an attorney may not substitute his own judgment for that of the client. 2003 FEO 16. A lawyer is required to make a motion to withdraw when the client has disappeared and the lawyer is ignorant of the client's objectives for the litigation. RPC 223. Such a motion is appropriate only after the lawyer has used reasonable diligence to locate the client but is unsuccessful. *Id*. If an attorney's motion to withdraw is denied, the attorney may participate in the proceedings to the limited extent that such participation is consistent with the known objectives of the missing client and the court's order of appointment. However, the attorney may not advocate for any particular position or outcome in the proceeding.

Action Steps:

1. Practice prevention. At your first meeting, make sure you get all of your client's contact information (cell phone, addresses, emails) as well as a close relative's or friend's contact. Do not let them only give you a significant other's information.
2. Let your client know (in writing) that failure to stay in touch with you or respond to your communications can result in your request to withdraw from their representation.
3. Document all the attempts you have made to contact your client. A letter is not sufficient these days. Show how you attempted to find them (texts, relatives, DMs, jail/prison searches).
4. File a motion to withdraw in advance of court and serve it to the client's last known address. If your client appears, you can withdraw the motion.
5. If you're not allowed to withdraw, protect your client's rights by participating but don't advocate for a specific outcome. See *In re S.N.W. & A.Z.W.*, 204 N.C. App. 556, 561, 698 S.E.2d 76, 79 (2010).

Conclusion: Don't leave your client hanging, but don't put yourself in a situation where you're representing an empty chair. Check out this On the Civil Side Blog for more information.