

**ALASKA BAR ASSOCIATION
ETHICS OPINION NO. 2026-1**

**What to Disclose (and Not to Disclose) to a Court When Seeking to
Withdraw from a Representation**

ISSUE PRESENTED

Lawyers who wish to terminate a representation may be required to file a motion and demonstrate “good cause” why the representation should be terminated. When explaining these reasons, however, lawyers have an ethical duty to protect the client’s confidences and secrets. What information related to the representation may and may not be disclosed to the tribunal in these circumstances?

Consider the following scenario: Lawyer is defending Client in a lawsuit by a contractor. The contractor alleges that Client failed to pay him for services rendered and misled him about the scope of the work. Client’s credibility will be key to the defense in this bench trial. Unfortunately, the working relationship between Lawyer and Client has been steadily deteriorating as the case has progressed. Client has failed to pay multiple invoices (despite warnings from Lawyer that this may necessitate Lawyer’s withdrawal). Client now demands that Lawyer present as evidence a contract that purports to cover the underlying transaction, but Client confides to Lawyer that the contract is a fake. Lawyer decides this is the final straw and files a motion to withdraw from the representation, but Client opposes the motion. What, if anything, may Lawyer tell the court in the original motion? If the court asks for additional detail about why withdrawal is appropriate here, what may the Lawyer say in response?

CONCLUSION

A lawyer has a duty to protect her or his client’s confidences and secrets under Rule 1.6, including when the lawyer notifies (or requests permission from) a tribunal regarding a withdrawal from that representation. Absent informed client consent or application of one of Rule 1.6’s exceptions, the lawyer must therefore take care to limit any discussion of information related to the representation so that any such confidence or secret is protected to the extent possible.

In the hypothetical above, Lawyer’s original motion seeking to withdraw from the representation should simply state that professional considerations or irreconcilable differences require termination of the representation. In response to the court’s follow-up inquiry, Lawyer may disclose information about the unpaid invoices to the extent Lawyer

reasonably believes the disclosure is necessary to accomplish the withdrawal. This may necessitate filing this information under seal in order to minimize disclosure. With respect to Client's insistence that Lawyer present false evidence, Lawyer should not disclose this confidential communication unless ordered to do so.¹ Lawyer should first remind the court that the lawyer's statement that professional considerations require termination of the representation should ordinarily be accepted as sufficient, particularly when Lawyer is bound to keep confidential the facts that would constitute an explanation for the withdrawal. If the court insists on additional information, Lawyer should assert nonfrivolous arguments as to why the information is protected by the attorney-client privilege or other applicable law. If the court rules that the information must be disclosed, Lawyer must consult with Client about the possibility of an appeal before disclosing the information.

APPLICABLE RULES

Rules 1.16, 1.6, 3.3, 1.4.

ANALYSIS

A lawyer who wishes to withdraw from the representation of a client may be required to file a motion requesting permission from the court for that withdrawal.² This is generally a "non-event" if the client consents to that action (especially if this occurs early in the case and/or other counsel is available to substitute into the case). If the client has declined to consent to that withdrawal, however, the court may still grant that motion for "good cause."³ This generally requires the lawyer to provide the court

¹ In this hypothetical, Lawyer did not actually offer any false evidence and so the duty to take certain remedial measures under Rule 3.3(a)(3), including potentially disclosing that information to the court, was not triggered. Instead, Lawyer has a mandatory duty to terminate the representation under Rule 1.16(a)(1)(A). See Rule 1.16 cmt (Mandatory Withdrawal) ("A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law.").

² See Alaska R. Civ. P. 81(e)(1)(C); Alaska R. Crim. P. 50(a) (noting that the Rules of Civil Procedure relating to the withdrawal of an attorney for a party shall apply to attorneys retained to represent an accused in a criminal action); Rule 1.16(c) (requiring a lawyer to "comply with applicable law requiring notice to or permission of a tribunal when terminating a representation").

³ Alaska R. Civ. P. 81(e)(1)(C).

with some valid reason for the withdrawal request. This Opinion addresses what information may and may not be disclosed to the court when seeking to demonstrate that good cause exists for a withdrawal, consistent with the lawyer's ethical obligations.

There are many reasons why withdrawal from a representation may be completely valid. Sometimes withdrawal is mandatory if, for example, the representation will result in the lawyer's violation of the rules of professional conduct.⁴ Other times withdrawal is permissive and justifiable if, for example, "the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client."⁵ When the lawyer is representing the client in pending litigation, court approval or notice to the court is generally required in order to effectuate the withdrawal.⁶ The Commentary to Rule 1.16 identifies an ethical problem the lawyer may face when providing such notice:

Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

To aid both lawyers and judges in addressing these issues, this Opinion describes the lawyer's obligations to clients and the court under Rules 1.6 and 3.3. The Opinion then provides guidance about how lawyers should (and, in some cases, must) address these issues when explaining to a court why withdrawal is appropriate.

Rule 1.6 – The Lawyer's Duty to Preserve a Client's Confidence or Secret.

⁴ See generally Rule 1.16(a).

⁵ Rule 1.16(b)(6). Other permissive grounds for terminating a representation are discussed in Rule 1.16(b).

⁶ Rule 1.16 cmt ("Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation.").

The lawyer's duty of confidentiality is described in Rule 1.6(a):

A lawyer shall not reveal a client's confidence or secret unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation and disclosures permitted by paragraph (b) below or Rule 3.3. For purposes of this rule, "confidence" means information protected by the attorney-client privilege under applicable law, and "secret" means other information gained in the professional relationship if the client has requested it be held confidential or if it is reasonably foreseeable that disclosure of the information would be embarrassing or detrimental to the client. In determining whether information relating to representation of a client is protected from disclosure under this rule, the lawyer shall resolve any uncertainty about whether such information can be revealed against revealing the information.

Lawyers therefore must not disclose a client's "confidences" or "secrets" unless: (1) the client gives informed consent;⁷ (2) such disclosure is impliedly authorized to carry out the representation (e.g., admitting undisputed facts); (3) one of the exceptions in Rule 1.6(b) applies (e.g., complying with a court order); or (4) Rule 3.3. is triggered (discussed below).⁸

It is important to note that Rule 1.6's prohibition applies to disclosure of a client's confidences or secrets to any third party, including a court.⁹ Absent consent or one of the other exceptions noted above, this restriction impacts what a lawyer can and cannot disclose as part of any motion seeking to establish good cause for withdrawing from a representation.

Rule 3.3 – Candor Toward the Tribunal.

⁷ Rule 9.1(g) (defining "informed consent").

⁸ The nature of these various exceptions is beyond the scope of this Opinion.

⁹ *Cf. Pederson v. Barnes*, 139 P.3d 552, 557 n.10 (Alaska 2006) (noting that Rule 1.6(b)(1) permits lawyers to disclose confidential client information to a court when the lawyer believes that the disclosure is reasonably necessary to prevent a crime by the client that is likely to result in substantial injury to the property of another).

“A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client’s case with persuasive force. Performance of that duty while maintaining confidences and secrets of the client, however, is qualified by the advocate’s duty of candor to the tribunal.”¹⁰ Rule 3.3 thus imposes a variety of affirmative duties on lawyers when communicating with the court, including the duty to disclose a client’s confidences or secrets under certain circumstances. Put differently, the lawyer’s duty to protect the client’s confidences and secrets is necessarily subservient to the lawyer’s duty not to mislead the court.

This duty comes in several forms. For example, a lawyer has a duty to correct a false statement of material fact that was previously made to the court.¹¹ The lawyer also has a duty to take reasonable and timely remedial measures if she or he learns that the lawyer’s client (or the lawyer or a witness called by the lawyer) offered false material evidence to the court. This can include disclosure to the court, if necessary.¹² Likewise, if the lawyer knows that her or his client plans to engage in criminal or fraudulent conduct related to an adjudicative proceeding, the lawyer may also be required to disclose that to the court.¹³

What Are Appropriate Disclosures in a Motion Seeking to Withdraw from a Representation?¹⁴

If a lawyer is required to demonstrate “good cause” for seeking to withdraw from a representation, the lawyer has several options for satisfying that demonstration without violating Rule 1.6’s duty of confidentiality.

¹⁰ Rule 3.3 cmt.

¹¹ Rule 3.3(a)(1)

¹² Rule 3.3(a)(3).

¹³ Rule 3.3(b).

¹⁴ Several of these concepts are borrowed from ABA Formal Opinion 519 (Dec. 3, 2025). The analysis differs somewhat because the duty of confidentiality under Alaska’s rules of professional conduct is narrower than the ABA’s Model Rule 1.6(a); the former is limited to the protection of “a client’s confidence or secret,” while the latter generally prohibits the disclosure of any “information relating to the representation” absent consent or an exception to the rule. See Rule 1.6 cmt (finding that the ABA’s approach “was excessively broad”).

First, to state the obvious, not all reasons for withdrawing from a representation implicate Rule 1.6. A lawyer is free to disclose to the court that the lawyer’s own physical or mental impairment (e.g., a recent surgery) materially impairs the lawyer’s ability to represent the client,¹⁵ since this disclosure does not include any secret or confidence of the client.

Second, if the lawyer has an affirmative ethical obligation to disclose certain information, the lawyer must do so notwithstanding Rule 1.6. In particular, Rule 3.3(c) emphasizes that the disclosure duties stated in Rules 3.3(a) and (b)—regarding the offering of false evidence or criminal or fraudulent conduct related to an adjudicative proceeding—“apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.”¹⁶ It is important to note here that, while a lawyer is obliged to take certain “reasonable and timely remedial measures” in response to violations of Rules 3.3(a) and (b), these remedial measures do not always include disclosure of confidential information. Instead, the rules provide that these remedial measures include, “if necessary, disclosure to the tribunal.”¹⁷ To the extent that such disclosures are necessary, however, they supersede the confidentiality protections of Rule 1.6.

Third, the lawyer may obtain the client’s informed consent for any disclosure.¹⁸ In order to obtain such consent, the lawyer will need to adequately explain the material risks of, and the reasonably available alternatives to, making such a disclosure. If informed consent is obtained, then the disclosure of the client’s confidence or secret does not violate Rule 1.6. (If the client has not consented to the lawyer’s withdrawal from the representation, however, it may be difficult to obtain informed consent for this type of disclosure.)

Fourth, the lawyer may and should simply tell the court that “professional considerations require termination of the representation,”¹⁹ since such a statement does not disclose any confidence or secret. As the Commentary to Rule 1.16 notes, this “ordinarily should be accepted as sufficient” because it alerts the court that the withdrawal is triggered by

¹⁵ Rule 1.16(a)(1)(B).

¹⁶ Rule 3.3(c).

¹⁷ Rule 3.3(a)(3); Rule 3.3(b).

¹⁸ Rule 1.6(a) (“A lawyer shall not reveal a client’s confidence or secret unless the client gives informed consent....”); Rule 9.1(g).

¹⁹ Rule 1.16 cmt.

one or more of the ethics rules and that any additional inquiry may necessitate the disclosure of confidential information.

Fifth, some disclosures of confidential information—including information regarding fee disputes—are permitted under Rule 1.6(b).²⁰ These include, for example, disclosures that the lawyer reasonably believes to be necessary to prevent certain crimes, frauds, or wrongful incarcerations.²¹ Lawyers may also reveal a client’s confidence or secret to the extent the lawyer reasonably believes necessary to establish a claim on behalf of the lawyer in a controversy between the lawyer and the client.²² This has been interpreted to cover disputes regarding nonpayment of the lawyer’s fees.²³ Note, however, that the exception only applies “to the extent the lawyer reasonably believes necessary” to address the issue.²⁴ It is therefore advisable for the lawyer to avoid addressing or disclosing any such confidential information in the first instance unless the lawyer reasonably believes it is necessary to achieve withdrawal. Presumably if the court is unsatisfied with the original motion and requires additional information, the lawyer will have an additional opportunity to provide that information with appropriate protections. In that circumstance, the lawyer should ask the court to limit access to the confidential information to the court or to those few people with a legitimate need to know that information, whether by seeking a protective order or making an *in camera* submission under seal or otherwise.²⁵ A lawyer might also consider requesting that another judge hear the additional information to avoid prejudicing the client, especially if the trial judge will be the fact finder in the client’s case.

Finally, if all else fails, disclosure of the client’s confidence or secret is permitted to comply with other law or a court order under Rule 1.6(b)(6).

²⁰ As noted above, disclosure is also permitted if impliedly authorized in order to carry out the representation, see Rule 1.6(a), but this has no application to a motion to withdraw.

²¹ Rule 1.6(b).

²² Rule 1.6(b)(5).

²³ ABA Formal Opinion 476 (2016).

²⁴ Rule 1.6(b); Rule 1.6 cmt (“Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified.”).

²⁵ Rule 1.6 cmt; ABA Formal Opinion 476.

If the court orders disclosure of the information, the lawyer may comply without violating Rule 1.6. Before reaching that point, however, the lawyer should make reasonable efforts to protect the confidential information in the following ways:

- Submit an initial motion that provides no confidential client information and simply states that “professional considerations require termination of the representation” or words to that effect.
- If the court requests additional justification, remind the court of Rule 1.16’s Commentary that the above statement “ordinarily should be accepted as sufficient,” particularly when providing additional justification would require the disclosure of a client’s confidences or secrets. If and as necessary, the lawyer should also raise arguments as to why production of the requested information is at odds with the attorney-client privilege and/or Rule 1.6. The lawyer should alert the court that disclosure of this information is prohibited unless and until there is a court order requiring its disclosure.
- If the court rejects these arguments and orders the disclosure of the confidential information, the lawyer must consult with the client about a possible appeal to the extent required by Rule 1.4.²⁶
- If forced to disclose the confidential information by court order, the lawyer should seek to disclose only the information to the extent “reasonably necessary” to abide by the order while still taking reasonable steps to protect the confidentiality of that information (e.g., by requesting that the information be provided *in camera* and under seal).²⁷ As reflected above, this means the lawyer should only disclose what is necessary to achieve withdrawal, supplementing that disclosure if and as necessary (with appropriate safeguards) so that the court has sufficient information to rule on the withdrawal request without unduly prejudicing the client.

²⁶ Rule 1.6 cmt.

²⁷ The Commentary to Rule 1.6 notes that Rule 1.6(b) “permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified.” The lawyer should, of course, comply in full with any court order requiring disclosure of confidential information. In so doing, the lawyer should take care to disclose that information only to the extent the lawyer reasonably believes is necessary to comply with that order and otherwise seek to protect the confidentiality of that information to the extent practicable.

Approved by the Alaska Bar Association Ethics Committee on April 2, 2026.

Adopted by the Board of Governors on April 29, 2026.