

Session: The Lawyer-Client Relationship

Topic: Withdrawal and Termination

Recommended time: 75 Minutes

Score: 42 Marks

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Facts

Justin, Liam and Dan were classmates from the law school. They had lost contact after graduation but reconnected on social media and when they discovered that they all live in New Brunswick, they agreed on a date to meet for lunch. At lunch, they reminisced on past school activities and shared information as to their current statuses. Justin is a sole practitioner in Moncton who specialises in criminal law. Liam works with Amerido Tech Inc. in St. John as corporate counsel while Dan works as an associate in a law firm at Fredericton.

While the friends chatted and gisted merrily among themselves, Justin mentioned a particular issue he's having with a client in a criminal matter. According to him, the client has been most problematic for him. He faces a charge of stealing substantial sum of money from his neighbour to which he pleaded not guilty. However, he has only paid \$2,150 out of the \$28,000 fee he charged in spite of the fact that the matter has lasted eleven months so far. The last time the matter came up for commencement of trial was last month and Justin had to tell the trial judge in open court that he has been having serious challenges with the client though he didn't disclose the nature of the challenge. The judge reluctantly granted an adjournment for another trial date which comes up in 3 days, yet the client hasn't been forthcoming with funds. So, he called the client two days ago to inform him that he was withdrawing his legal representation and the client should get another lawyer. The client cried over the phone and begged him because he wouldn't be able to represent himself due to his difficulty in hearing and language barriers but Justin told him flatly that he had made up his mind. Dan asked if Justin had notified the court and he said yes. When asked what reasons he gave the court, Justin said he told the plain truth that the client wasn't funding his legal representation as agreed; that he only paid \$2,150, and that the client kept promising to pay when the mother returns because he kept money with her, which Justin said he suspected to be the money stolen by the accused. But then, anyhow, he was done with the case and he had notified the judge so.

Liam spoke of his own experience a couple of months ago at his current place of work where the supervisor from whom he usually takes instructions had asked him to file false information regarding the

incorporation of a new non-profit company which he suspects was for the purpose of tax evasion. He had flatly rejected the request and when the supervisor persisted, he simply threatened to report him to the police if he dared repeat the request. The Chief Legal Officer of the company had then issued him with a query to show cause why his employment should not be terminated. Liam concludes by saying he is still contemplating his next line of action, which may include simply walking out of the door.

Dan on his part narrated the ugly incident with a client who had retained the firm in a breach of contract litigation which was assigned to him. This client has been most uncooperative and had continually pestered him to bring a motion for summary judgment probably based on advice he received from other lawyers. Dan had continued to advise him that bringing such summary judgment motion was totally unwise as it would be dangerously prejudicial to his case. However, the client had insisted on this course, noting that all other lawyers in the world believed this is the proper course of action. He had uttered several abusive words against Dan, and at point, asked derisively: "What kind of lawyer are you"? The last email he received from the client vowed never to sign any other document from Dan or respond to his calls/messages unless and until he accepted to file the motion. Dan says he is confused and doesn't even know what to do as this is one of the firm's most valuable clients, and he honestly believes bringing such summary judgment motion would destroy the client's case and put him in bad light. He is giving serious thoughts to terminating the retainer.

Advise Justin, Liam and Dan.

Notes:

This sample question deals with the issue of termination and withdrawal from representations. In what circumstances are lawyers permitted to withdraw their representations? Are there conditions to be fulfilled before withdrawal?

The sample question deals with the two types of withdrawals under the Model Code, obligatory withdrawal and optional withdrawal. It also deals with withdrawal from representations in criminal matters. Each of these instances of withdrawal has its own peculiar conditions that must be fulfilled and these are narrated in the sample answer below.