

RRC2 – Rule 3-700 [1.16]
Post-Agenda E-mails, etc. – Revised (May 30, 2015)
Drafting Team: Kornberg (Lead), Croker, Langford, Martinez

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May 23, 2016 Marlaud Email to Drafting Team, cc Chair, Difuntorum, Mohr, McCurdy & Lee:

Please see attached OCTC memo with comments concerning ABA MR 1.16. Please consider these comments in preparation for the June meeting.

Attached:

RRC2 - [4-100][3-400][3-410][3-700][1.8.5A][6.1][1.10][1.18][2.3][3.9][4.1][4.4][5.7][8.3] - 05-19-16 OCTC Memo to RRC2.pdf

May 19, 2016 OCTC Memo [Dresser] to RRC2:

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D. Rule 3-700 [Termination of Employment]

Please see OCTC's March 25, 2016 comment.

March 25, 2016 OCTC [Kim] Email to RRC2:

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J. Rule 3-700 [Termination of Employment]

OCTC does not recommend any revisions to rule 3-700.

May 26, 2016 Kehr Email to Difuntorum & Mohr:

Here are my thoughts on this proposed Rule ---

- 1) The subparagraphs of (a), (b), and (c) are inconsistent in sometimes beginning with initial capitalization and sometimes not. I think all should begin with lower case letters;
- 2) In paragraphs (a)(2) and (b)(9), it seems that the reason for the suggested addition of "or other law" in [Alt2], as explained at Report p. 21 (pdf p. 129), is that the reference to the State Bar Act is intended to mean § 6068(a), which speaks of a lawyer's obligation to support the Constitution and the laws of this State. I am not aware of any case or advisory opinion that applies the rule 3-700 or the MR 1.16 duty to withdraw to a representation that violates "other law", and I cannot think of any standard outside of the RPC and State Bar Act that would make a representation illegal. If there is none, including "or other law" would be misleading. If there is an example to provide, we should consider adding it to a Comment;
- 3) I would insert at the beginning of (b)(7): "the lawyer believes in good faith that" I see this as a more specific expression of the current standard ("indicates"), and that it is the lawyer's good faith belief that should govern the lawyer's right to proceed under that paragraph;
- 4) Paragraph (b)(8) would insert "unreasonably [difficult]". This change would eliminate the difference between current (B)(3), making withdrawal mandatory if the lawyer's mental or physical condition renders it "unreasonably difficult" to carry out the employment effectively, and permissive withdrawal under (C)(4) when the lawyer's condition makes the representation "difficult". That gradation makes sense. I don't think this is broken and so needs no repair.

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- 5) In the second line of paragraph (c), "a" should be "the";
- 6) I would add to Comment [5]: " Paragraph (e)(1) also does not affirmatively grant to the lawyer a right to retain copies of client papers or to recover the cost of copying them; these are issues that might be determined by contract, court order, or rule of law." Without this addition, the Comment would mean that a lawyer has an absolute right to copy client files without regard to any related contract, court order, etc. Example: Lawyer has the Coca Cola formula in order to represent the company in litigation and received it under an engagement agreement requiring its return at the conclusion of the representation.