



### **Oversharing: One Big Risk of Withdrawal**

A motion to withdraw signals that something is very wrong with the lawyer-client relationship. Motions to withdraw typically fall under [MR 1.16](#), which in some cases mandates withdrawal, and in some cases permits withdrawal. Either way, when appearing before a tribunal, that tribunal can elect to keep the lawyer in the relationship, no matter how good the lawyer's reason to get out. MR 1.16(c).

Aside from client enmity, and whatever the motivation for seeking withdrawal, one of the biggest risks in withdrawing is the potential for sharing too much information. Lawyers' duties of confidentiality, among others, remain intact during the period of withdrawal (and after, for that matter). In this regard, judges will often ask for reasons why the motion is being made. Under the terms of the rules and its comments, lawyers should not share too much, let alone anything that could accrue to the client's detriment. See, e.g., MR 1.16(d), [comment 3]: "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."

Now there's an informal judicial ethics opinion published in Michigan that lawyers can point to in order to educate judges on how little lawyers can and should share as part of a withdrawal motion. Published on February 20, 2023, [JI-154](#) provides that:

Ordering disclosure of protected information should be exceptional, rather than normal practice, and narrowly tailored to what is reasonably necessary to allow the court to fulfill its duties of impartiality and diligence as required under Canon 3. If the court deems it necessary to order disclosure of protected information, only the court should elicit that information. The court should not allow another party or lawyer to examine the attorney regarding the motion to withdraw. The lawyer is an officer of the court and as such should be questioned by the tribunal only. Rule 1.6 allows disclosure of protected information only if ordered by a court, and not in response to questions posed by parties or their counsel.

When preparing a motion to withdraw, remember that the duty of confidentiality remains. If you have questions on a motion to withdraw or need related guidance, please contact [Attorneys Risk Management](#), or an ethics professional in your jurisdiction.



**Confidential advice from experienced risk management counsel.**  
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