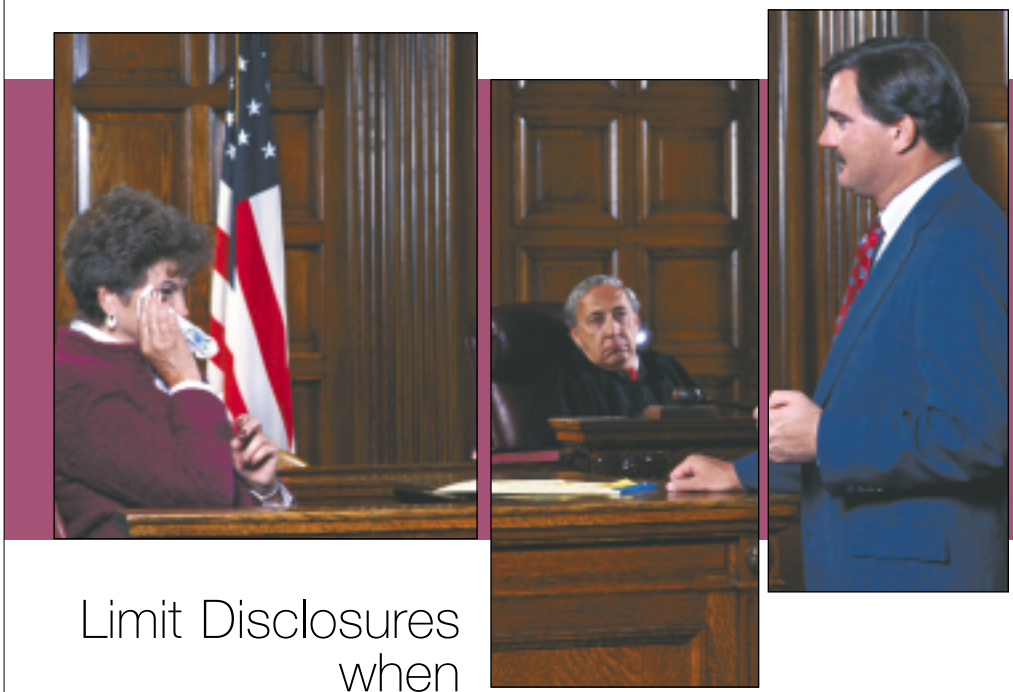
BY DAVID D. DODGE



Limit Disclosures when Withdrawing as Counsel

Lawyers may be detail-oriented, but too many facts can be your undoing.

When applying to a court to withdraw as counsel, there are many rights and duties of counsel and client to consider.[1] The general rule seems to be that an application to withdraw as counsel need initially state only general grounds for withdrawing. If contested by the client, more specific reasons can be given. But a disciplinary case from the District of Columbia demonstrates what can happen to a lawyer who tries to be too specific when attempting to end the attorney–client relationship.

In *In re Gonzalez*,[2] the lawyer–client relationship began to deteriorate when the clients failed to pay Mr. Gonzalez' bills. Gonzalez wrote several letters to the clients complaining about lack of payment and also accused them of failing to cooperate in the preparation of the defense, making misrepresentations and turning down a reasonable offer of settlement. Gonzalez finally filed a motion to withdraw.

The lawyer did not simply base his application on general grounds, such as the clients' failure to comply with the terms of his representation. Instead, Gonzalez stated that his clients were not paying their bills, had failed to cooperate with him and missed appointments, failed to timely provide information necessary to the case and made misrepresentations to him.

In addition, Gonzalez attached to his motion copies of seven letters in which he had either complained to the clients of their alleged noncooperation and for misrepresenting certain facts to him. In the letters, Gonzalez revealed how much money the clients owed him and, in one letter, he gave his clients a frank evaluation of a settlement offer. Gonzalez mailed a copy of his motion to opposing counsel.

Bar counsel for the District of Columbia brought a complaint accusing Gonzalez of, among other things, violating the District's equivalent of Arizona's ER 1.6(a)(1),[3] which prohibits revealing a client's confidences or secrets.

In affirming an informal reprimand, the

Court of Appeals found that there was no doubt that the client information Gonzalez disclosed was gathered in the course of the professional relationship. Disclosure of these facts in the manner that Gonzalez had done it was obviously embarrassing to the clients and likely would be detrimental to them even with new counsel.

The court disagreed with Mr. Gonzalez' final contention that he was required to disclose the client information or his motion to withdraw would have been denied. The court said that, if he really believed that, Gonzalez could have made the disclosure *in camera* after redacting the embarrassing information from the documents he filed with the court.

The moral of this story is that a withdrawal need be "noisy" only if the circumstances so dictate. Otherwise, try to avoid embarrassing the client or disclosing potentially embarrassing information. This is particularly appropriate when you are not even sure in the first instance that the client is going to resist your application to withdraw.

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endnotes

1. *Withdrawal From Representation,* 35 ARIZ. ATTY. 7, p. 18 (March 1999).
2. 2001 WL 617919 (D.C. Ct. App. 2001).
3. Rule 42, ARIZ.R.S.CT.

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