

What To Do When You Can't Contact Your Client

Every so often the ethics line takes a call from a member worried because they can't contact their client and a deadline is near. *Should they act to protect their client, even if they can't reach them?* What if the statute of limitations is approaching? If they don't file suit, the client could be extremely prejudiced but all efforts to contact the client by phone, email and mail brought dead ends. While I can't give them legal advice, I can walk them through the rules that cover this situation.

Without authorization from the client, an attorney may not take independent action.

[RPC 1.2](#) states that a lawyer shall abide by the client's decision concerning the objectives of the representation and consult with the client as to the means by which those are carried out. *In re Disciplinary Proceeding Against Van Camp*, 171 Wn.2d 781, 257 P.3d 599 (2011). The client may authorize the lawyer to take specific action on the client's behalf without further consultation, [RPC 1.2, Comment 3](#), and some tactical decisions can be made without consultation with the client if they are impliedly authorized to carry out the representation. The question of whether an action has been impliedly authorized depends upon the totality of the communications between the lawyer and the client and whether the attorney can articulate a good faith belief that they have been so authorized (stay tuned for a future blog on implicit authorization). See [Advisory Opinion 1899](#). **An attorney may not file suit, accept a settlement offer, or take other definitive action without direction from his client, even if the attorney feels action is in the best interest of the client.** For example, in *In re Disciplinary Proceeding Against Marshall*, 160 Wash 2d 317, 157 P3d 859 (2007), Mr. Marshall was sanctioned for filing an appeal without proper consultation with or authorization from his clients.

If an attorney is having trouble contacting a client, the attorney should make all reasonable efforts to locate the client. If contacting the client is not possible, the attorney should keep records documenting all efforts to give notice, including efforts to contact the client by mail, phone, and email.

If the attorney still can't locate the client, permissive or mandatory withdrawal is appropriate. [RPC 1.16](#) sets forth two possibilities for permissive withdrawal: [\(b\)\(5\)](#) and [\(6\)](#). [RPC 1.16\(b\)\(5\)](#) allows withdrawal when a client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw. The client's disappearance or failure to communicate with the lawyer constitutes a failure to fulfill an obligation to the lawyer, and is therefore appropriate grounds for the lawyer's withdrawal. [RPC 1.16\(b\)\(6\)](#) allows withdrawal when the representation has been rendered unreasonably difficult by the client. A client's disappearance and failure to communicate can render the representation unreasonably difficult. In addition, compliance with the ethics rules *may require* withdrawal. [RPC 1.16\(a\)\(1\)](#) states that a lawyer *shall* withdraw if continued representation will result in violation of the Rules of Professional Conduct. Since [RPC 1.2](#) requires the client to authorize attorney action, then a lawyer acting without client authorization would be violating the RPCs. See [Advisory Opinion 2225](#). Note: the rules allow an attorney to take limited action without client direction when a client *with seriouslydiminished*

capacity is threatened with imminent and irreparable harm. See [Comments 9 and 10](#) to [RPC 1.14](#).

Attorneys must comply with applicable law regarding notice to or permission of a tribunal before termination of representation. [RPC 1.16\(c\)](#). In a recent discipline case, the attorney was sanctioned for withdrawing “effective immediately” which was not consistent with [CR 71 \(c\)\(1\)](#) which mandates at least a 10 day notice period. *In re Disciplinary Proceeding Against Pfefer* 182 Wash 2d 716, 344 P3d 1200 (2015). Procedures for withdrawal must preserve all confidential information. See [Advisory Opinion 201701](#) regarding preserving confidentiality in motions for withdrawal.

If you can’t contact your client, document all your diligent efforts to locate him. Review your previous discussions and agreements to determine what actions your client has authorized you take. If specific action is necessary and you do not have authorization from your client, a motion for withdrawal may be your next step.