D. Withdrawing as Counsel During Litigation

Virginia Supreme Court Rule 1:5 - Counsel and Parties Appearing Without Counsel

Va. Sup. Ct. R. 1:5(b) "Counsel of record" includes counsel or a party who has signed a pleading in the case or who has notified the other parties and the clerk in writing that he or she appears in the case, or has endorsed a draft order of the court as provided in Rule 1:13.

Va. Sup. Ct. R.1:5(d)(1) Counsel of record may not withdraw from or terminate appearances in a case except by (i) leave of court after notice to the client of the time and place of a motion for leave to withdraw, or (ii) pursuant to the provisions in subpart (f)(4) of this Rule.

Va. Sup. Ct. R.1:5(d)(2) Any order permitting withdrawal must state the name, Virginia State Bar number, office address and telephone number of the attorney or law firm being substituted as counsel of record for the party, along with any electronic mail (email) address and any facsimile number regularly used for business purposes by such counsel; or

Va. Sup. Ct. R.1:5(d)(3) If replacement counsel is not being designated at the time of withdrawal by an attorney or law firm, the order permitting withdrawal must state the address and telephone number of the formerly represented party for use in subsequent mailings or service of papers and notices, and the pro se party will be deemed counsel of record.

Va. Rules of Professional Conduct

Rule 1.16 Declining or Terminating Representation

Subsection (e) requires a prompt return of all original client furnished documents upon the termination of representation, regardless of whether outstanding attorney fees are due

and owing. This includes the originals of any official documents (e.g. will, deed, corporate minutes) and if requested, the attorney must also provide copies of all transcripts, pleadings, discovery responses, working and final drafts of legal instruments, investigative reports, legal memoranda, research materials, and bills previously submitted to the client, and other attorney work product documents prepared or collected for the client in the course of representation.

Rule 1.6. Confidentiality of Information.

A lawyer shall not reveal information protected by the attorney-client relationship where it could embarrass or be detrimental to the client. There are a few exceptions for evidence the client will commit a crime or act causing death, bodily injury or substantial injury to property or financial interests or another.

You do not want to put anything on the record, or in any way advise opposing counsel or the spectators of the specifics of the impasse leading to your motion to withdraw. Even while arguing a motion to withdraw, an attorney cannot prejudice his client or harm the client's claim. About the only thing you can tell the court is that you and your client have "irreconcilable differences" which require withdrawal. With few exceptions, you cannot elaborate any further.

Rule 3.7 Lawyer as Witness

(a) A lawyer shall not act as an advocate in an adversarial proceeding in which the lawyer is likely to be a necessary witness except where:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

(b) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that the lawyer may be called as a witness other than on behalf of the client, the lawyer may continue the representation until it is apparent that the testimony is or may be prejudicial to the client.

(c) A lawyer may act as an advocate in an adversarial proceeding in which another lawyer in the lawyer's firm is likely to be called as witness unless precluded from doing so by Rule 1.7 or 1.9.

CAVEAT: Cumulative and Redundant Testimony

However, a law firm is not disqualified where testimony of attorney would be cumulative and redundant. -- A law firm should not be disqualified from representing a party to an action on grounds that the other party plans to call attorneys affiliated with the firm as witnesses, where their testimony would be cumulative and in some instances redundant. Chantilly Constr. Corp. v. John Driggs Co., 39 Bankr. 466 (E.D. Va. 1984) (decided under former DR 5-102).

WHEN IN DOUBT, EMAIL OR CALL THE VIRGINIA BAR'S ETHIC'S HOTLINE

Lawyers now can use e-mail to submit their ethics questions to the Virginia State Bar Ethics Hotline by going to https://www.vsb.org/site/regulation/ethics/ and clicking E-mail Your Ethics Questions. The hotline will continue to accept questions by phone at (804) 775-0564. The confidential service is available to members of the Virginia State Bar and their staffs.