

# SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF  
JAMES F. HYLAND  
JUDGE



MIDDLESEX COUNTY COURT HOUSE  
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**RE:** In re Propecia; Motions to Withdraw as Counsel

11/3/17

Withdrawal in a litigation matter is governed not only by the ethical obligations of N.J.R. of Prof'l Conduct 1.16(c) but also by the court rules. Generally, counsel is expected to represent a client until completion of the matter, which in litigation means until the expiration of time for any appeals from a final judgment. N.J. Ct. R. 1:11-3. It is counsel's responsibility as an officer of the court to properly vet their cases before filing complaints to ensure that they are not frivolous.

New Jersey Court Rules require client consent or court approval or both before an attorney can terminate representation of a client in litigation. Despite a client's consent, if the court determines that counsel should continue representation, he or she must do so. N.J.R. of Prof'l Conduct 1.16(c). The timing of the motion for leave to withdraw is an important factor in the court's decision to grant the motion. The motion should be made as early as possible, so as to minimize the effect of withdrawal upon the other parties and the court. The closer the case is to trial the harder it will be for counsel to withdraw. Kriegsman v. Kriegsman, 150 N.J. Super. 474 (App. Div. 1977).

In the matter at hand, Case Management Order No. 11 controls the procedure for withdrawing as counsel. Paragraph 2 states that the Court will entertain Motions to Withdraw as Counsel made returnable by September 7, 2017. As the September 7<sup>th</sup> deadline to withdraw has passed, the plaintiff's counsel has pushed the boundary regarding the timing of the motion given that these cases have been filed beginning in June 2011. Moving forward, the Court will be required to hold similar motions to a higher bar. Pursuant to New Jersey Court Rule 1:1-2(a), "The rules... shall be construed to secure a just determination, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. Unless otherwise stated, any rule may be relaxed or dispensed with by the court in which the action is pending if adherence to it would result in an injustice. In the absence of rule, the court may proceed in any manner compatible with these purposes and, in civil cases, consistent with the case management/trial management guidelines."

A withdrawing attorney must obtain the client's consent to withdraw before either the pretrial conference or a trial date is set (whichever occurs first) in civil cases. After those litigation landmarks have passed, counsel must obtain consent of the court unless the client consents in writing, a substitution of attorney is filed, all parties waive notice and right to be heard before the court on the withdrawal and, finally, the withdrawing and substituted attorney certifies that the withdrawal will not cause a delay in litigation. N.J. Ct. R. 1:11-2.

Counsel also has certain responsibilities to the client with regard to the withdrawal and cannot simply abandon the client. For example, counsel must formally withdraw so that he or she is no longer attorney of record and if counsel does receive filings he or she must not simply ignore them. Strauss v. Fost, 209 N.J. Super. 490, 507 A.2d 1189 (App. Div.). Counsel who terminates representation must provide any required notice to the relevant court and must protect the client by giving reasonable notice of termination, allow client time to find new counsel, return all papers and property and refund any fees the client is entitled to have returned. N.J.R. of Prof'l Conduct 1.16(c), (d). Notice to the client must clearly explain, for example, the relevant statute of limitations and when it expires, and advise the client to seek alternate representation prior to that expiration. See Gilles v. Wiley Malehorn & Sirota, 345 N.J. Super. 119, 783 A.2d 756 (App. Div. 2001). Moreover, the withdrawing attorney has an obligation to turn over the client's files to the new attorney, or the client if appearing pro se. Frenkel v. Frenkel, 252 N.J. Super 214 (App. Div. 1991).

The Court takes the withdrawing counsel's responsibilities very seriously to ensure that there will be a smooth transition that will not cause unnecessary delays. As such, the Court expects withdrawing counsel to provide their client with, at a minimum, a copy of their files, an explanation of upcoming deadlines, and an outline explaining where they can find relevant files online. For example, the withdrawing counsel should ensure that they explain the upcoming deadlines found in CMO 14 detailing that the plaintiff shall have 30 days to substitute new counsel or enter a *pro se* appearance or their case will be dismissed with prejudice.

Withdrawing counsel has exhibited good cause sufficient to merit granting the motion to withdraw as counsel during the October 12, 2017 good cause hearing and through their certifications. As such, Plaintiff's motions to withdraw as counsel are hereby GRANTED.