

Source: [My Sources](#) > [Federal Legal - U.S.](#) > [Archived Code of Federal Regulations](#) > **CFR, 1997** ⓘ  
Terms: **37 c.f.r. 10.40** ([Edit Search](#))

**37 CFR 10.40**

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TITLE 37 -- PATENTS, TRADEMARKS, AND COPYRIGHTS  
REVISED AS OF JULY 1, 1997  
CHAPTER I -- PATENT AND TRADEMARK OFFICE, DEPARTMENT OF COMMERCE  
SUBCHAPTER A -- GENERAL  
PART 10 -- REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE  
PRACTICE BEFORE THE PATENT AND TRADEMARK OFFICE  
PATENT AND TRADEMARK OFFICE CODE OF PROFESSIONAL RESPONSIBILITY

**37 CFR 10.40**

§ 10.40 Withdrawal from employment,

(a) A practitioner shall not withdraw from employment in a proceeding before the Office without permission from the Office (see §§ 1.36 and 2.19 of this subchapter). In any event, a practitioner shall not withdraw from employment until the practitioner has taken reasonable steps to avoid foreseeable prejudice to the rights of the client, including giving due notice to his or her client, allowing time for employment of another practitioner, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules. A practitioner who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(b) Mandatory withdrawal. A practitioner representing a client before the Office shall withdraw from employment if:

(1) The practitioner knows or it is obvious that the client is bringing a legal action, commencing a proceeding before the Office, conducting a defense, or asserting a position in litigation or any proceeding pending before the Office, or is otherwise having steps taken for the client, merely for the purpose of harassing or maliciously injuring any person;

(2) The practitioner knows or it is obvious that the practitioner's continued employment will result in violation of a Disciplinary Rule;

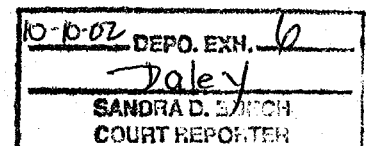
(3) The practitioner's mental or physical condition renders it unreasonably difficult for the practitioner to carry out the employment effectively; or

(4) The practitioner is discharged by the client.

(c) Permissive withdrawal. If paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in matters pending before the Office unless such request or such withdrawal is because:

(1) The petitioner's client:

(i) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;



(ii) Personally seeks to pursue an illegal course of conduct;

(iii) Insists that the practitioner pursue a course of conduct that is illegal or that is prohibited under a Disciplinary Rule;

(iv) By other conduct renders it unreasonably difficult for the practitioner to carry out the employment effectively;

(v) Insists, in a matter not pending before a tribunal, that the practitioner engage in conduct that is contrary to the judgment and advice of the practitioner but not prohibited under the Disciplinary Rule; or

(vi) Has failed to pay one or more bills rendered by the practitioner for an unreasonable period of time or has failed to honor an agreement to pay a retainer in advance of the performance of legal services.

(2) The practitioner's continued employment is likely to result in a violation of a Disciplinary Rule;

(3) The practitioner's inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal;

(4) The practitioner's mental or physical condition renders it difficult for the practitioner to carry out the employment effectively;

(5) The practitioner's client knowingly and freely assents to termination of the employment; or

(6) The practitioner believes in good faith, in a proceeding pending before the Office, that the Office will find the existence of other good cause for withdrawal.

**HISTORY:**

50 FR 5172, Feb. 6, 1985.

**AUTHORITY:**

5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

**NOTES:**

NOTES APPLICABLE TO ENTIRE CHAPTER:

EDITORIAL NOTE: Chapter I -- Patent and Trademark Office, Department of Commerce, Subchapter A -- General, contains patent and trademark regulations. Subchapter A has been restructured to allow parts pertaining to patent regulations and trademark regulations to be grouped separately.

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