Professional Responsibility - When Do the Equities Tip the Scale to Require an Attorney to Remain in a Case without a Client

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PROFESSIONAL RESPONSIBILITY—WHEN DO THE EQUITIES TIP THE SCALE TO REQUIRE AN ATTORNEY TO REMAIN IN A CASE WITHOUT A CLIENT?

Ohntrup v. Firearms Center, Inc. (1986)

In Ohntrup v. Firearms Center, Inc., the United States Court of Appeals for the Third Circuit was confronted with a practical and ethical dilemma created by an implicit conflict between the Model Code of Professional Responsibility (the "Code") and a local rule of court. In a case of first impression, the court was asked to reconcile Disciplinary Rule 2-110(B)(4) of the Code, which imposes an absolute duty on an attorney to withdraw from representation at a client's request, and Local Rule 18(c) of the Eastern District of Pennsylvania which requires judicial approval prior to withdrawal. Affirming the district court's decision denying a law firm's motion to withdraw after its client had terminated its representation, the Third Circuit held that denial of the

1. 802 F.2d 676 (3d Cir. 1986).
   (3) the lawyer is discharged.

   Id.
3. E.D. Pa. R. 18(c). For the text of this rule, see infra note 27.
4. Model Code of Professional Responsibility DR 2-110(B)(4) (1980). For the text of this provision, see infra note 24. However, DR 2-110(A)(1) arguably limits this duty if permission from a tribunal is required. See Model Code of Professional Responsibility DR 2-110(A)(1) (1980); see also Ohntrup, 802 F.2d at 679. For the text of DR 2-110(A)(1), see infra note 26.
5. E.D. Pa. R. 18(c). For the text of this rule, see infra note 27.
6. Ohntrup, 802 F.2d at 680. It is generally recognized that a client has an absolute right to discharge his attorney with or without cause. See, e.g., Kashefi-Zihagh v. INS, 791 F.2d 708, 711 (9th Cir. 1986) (party may terminate counsel's representation at any time); Fluhr v. Roberts, 463 F. Supp. 745, 747 (W.D. Ky. 1979) (attorney-client relationship may always be terminated by client with or without cause); Estee Candy Co. v. United States, 343 F. Supp. 1362 (Cust. Ct. 1972) (party litigant has right to discharge and to terminate contractual relations with his attorney at any time); Paolillo v. American Export Isbrandtsen Lines, 305 F. Supp. 250, 251 (S.D.N.Y. 1969) (client always has right to discharge his attorney, even without cause). Moreover, once that relationship is terminated, the attorney is generally required to withdraw. See, e.g., Carlson v. Nopal Lines, 460 F.2d 1209, 1211 (5th Cir. 1972) (client may discharge his attorney and attorney may not then insist that attorney-client relationship continues after dis-

(895)
motion did not create an ethical conflict with the Model Code of Professional Responsibility, and that the district court did not abuse its discretion in reaching that decision. The court noted, however, that a law firm may be entitled to withdraw when its appearance no longer serves any "meaningful purpose."

In Ohntrup, Morgan, Lewis & Bockius ("Morgan"), a Philadelphia-based law firm, was retained by Makina ve Kimya Endustrisi Kurumu ("Makina"), a corporation owned entirely by the Turkish government, to defend it in a products liability suit brought against it by Mr. and Mrs. Ohntrup in the United States District Court for the Eastern District of Pennsylvania. Following a lengthy trial, the district court entered a charge: In re Collins, 246 Ga. 325, 271 S.E.2d 473 (1980) (client has "clear right" to discharge attorney at any time, at which point attorney is "bound to withdraw"); see also C. WOLFRAM, MODERN LEGAL ETHICS § 9.5.4, at 552 (1986) (client has right to discharge attorney at any time, making withdrawal imperative); 7A C.J.S. Attorney & Client § 220, at 387-90 (1980) (client has absolute right to discharge attorney at will).

However, withdrawal may be limited by requiring court approval where rights of other litigants or the administration of justice would be affected by such action. See, e.g., Brand v. NCC Corp., 540 F. Supp. 562, 565 (E.D. Pa. 1982) (once counsel has entered appearance, client cannot then limit attorney's authority to settlement negotiations; leave of court for withdrawal under Local Rule 18 denied); In re Marriage of Milovich, 150 Ill. App. 3d 596, 615, 434 N.E.2d 811, 826 (1982) (party does not have unconditional right to discharge attorney); 7A C.J.S. Attorney & Client § 221, at 394 (1980) (withdrawal permitted only when rights of others or court's administration are not affected).

Whether an attorney will be permitted to withdraw is within the discretion of the trial court, which decision will generally be reversed only if plain error is committed. See, e.g., Phoenix Mut. Life Ins. Co. v. Radcliffe on the Del., Inc., 439 Pa. 159, 164, 266 A.2d 698, 700 (1970) (no error in granting petition to withdraw because proceedings had not yet reached "critical stage" of being listed for trial); Farkas v. Sadler, 119 R.I. 35, 41, 375 A.2d 960, 963 (1977) (trial judge did not abuse discretion by denying motion to withdraw, since presentation of motion on second day of trial would require continuance, placing additional burden on defendants); see also 7A C.J.S. Attorney & Client § 222, at 401 (1980) (attorney may withdraw without cause so long as withdrawal will not "work an injustice on the other party"). Factors to be weighed by the court in connection with its decision include the reasons supporting the request to withdraw, and the potential effect of that withdrawal on the efficient and proper functioning of the court and other parties to the litigation. See, e.g., Farkas, 119 R.I. at 41, 375 A.2d at 963.

The Third Circuit suggested that such withdrawal may be appropriate even absent the appearance of substitute counsel. Id. For a discussion of the court's reasoning, see infra notes 34 & 35 and accompanying text.

10. 802 F.2d at 677. Plaintiff Robert Ohntrup sustained injury on May 2, 1975, while using a pistol which he had purchased from Firearms Center, Inc. (FCI), and which had been manufactured by Makina. Id. Ohntrup and his wife brought a products liability suit against FCI based on diversity of citizenship. Id. FCI then impleaded Makina as third-party defendant, and the Ohntrups

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substantial judgment against Makina, which was subsequently affirmed by the Third Circuit on Makina's appeal.11 Thereafter, when Makina amended their complaint to include claims against Makina. Ohntrup v. Firearms Center Inc. ("Ohntrup v. Firearms"), 516 F. Supp. 1281, 1283 (E.D. Pa. 1981).


On the eve of trial, Makina moved to dismiss all claims against it, by invoking sovereign immunity to thus deprive the court of jurisdiction. Ohntrup v. Firearms, 516 F. Supp. at 1283. Addressing the plaintiffs' contention that Makina had "impliedly waived" its right to invoke sovereign immunity, the district court conceded that since Makina is a Turkish corporation wholly owned by the Turkish government, it is a "foreign state" within the meaning of 28 U.S.C. §§ 1603(a) and (b) (1982), and would therefore be immune from suit under 28 U.S.C. § 1604. Id. at 1284. Section 1603(a) defines a "foreign state" to include "a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b)," which states:

(b) An "agency or instrumentality of a foreign state" means any entity—
   (1) which is a separate legal person, corporate or otherwise, and
   (2) which is an organ of a foreign state or a political subdivision thereof . . . and
   (3) which is neither a citizen of a State of the United States . . . nor created under the laws of any third country.


However, the district court held that the commercial activity exception of § 1605(a)(2) applied to Makina, since Makina's commercial activities which gave rise to the suit created "substantial contact" with the United States, and Makina had intended that the guns be imported and sold here. Ohntrup v. Firearms, 516 F. Supp. at 1285-86. Section 1605 states general exceptions to the jurisdictional immunity of a foreign state, set forth in § 1604, by providing that a foreign state shall not be immune in any case:

(2) in which the action is based upon a commercial activity carried on in the United States by a foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States.


Furthermore, the district court held that Makina also met the "minimum contacts" requirements of International Shoe Co. v. Washington, 326 U.S. 310 (1954). Ohntrup v. Firearms, 516 F. Supp. at 1285-86. The district court thus
refused to satisfy the judgment, the Ohntrups commenced discovery in aid of execution, followed by motions to compel discovery. Makina continually failed to respond to these efforts.\(^\text{12}\) During these proceedings, the Ohntrups continued to serve all papers on Morgan.\(^\text{13}\)

Despite Morgan’s repeated attempts, Makina refused to communicate with Morgan regarding what further action, if any, it desired Morgan to take on its behalf.\(^\text{14}\) Morgan thus regarded its representation in the matter as terminated and filed a motion with the district court for leave to withdraw as counsel.\(^\text{15}\) Shortly thereafter, Makina confirmed by telex that it no longer desired Morgan’s representation.\(^\text{16}\) Although conscious of the potential practical problems that Morgan’s continued representation might create for the firm,\(^\text{17}\) the district court denied Morgan’s motion to withdraw, indicating that Morgan must remain in the case as Makina’s representative until Makina made arrangements for substitute counsel.\(^\text{18}\)

Before addressing the merits of the case, the Third Circuit dismissed the Ohntrups’ contention that the court lacked appellate jurisdiction because the lower court’s denial of Morgan’s motion for leave to withdraw was not a final order under 28 U.S.C. § 1291 and, therefore, held that Makina was not immune from suit and denied Makina’s motion to dismiss.\(^\text{Id.}\)

\(^\text{12.}\) 802 F.2d at 677-78. Plaintiffs’ motions to compel discovery followed Makina’s continued refusal to cooperate.\(^\text{Id.}\) Additionally, plaintiffs filed motions with the district court to fix the amount of delay damages, and to include the Republic of Turkey in the judgment, in order to commence execution proceedings. Brief of Appellees at 5, Ohntrup (No. 85-1783). The district court granted the motion to fix delay damages, but denied without prejudice the motion to include the Republic of Turkey.\(^\text{Id.}\)

\(^\text{13.}\) 802 F.2d at 678. Morgan apparently tried to contact Makina with regard to the post-judgment proceedings, but Makina failed to respond.\(^\text{Id.}\)

\(^\text{14.}\) \(^\text{Id.}\)

\(^\text{15.}\) \(^\text{Id.}\) At the time of the appeal to the Third Circuit on the original action, Morgan and Makina had an understanding that an adverse decision at that level would terminate the representation. Brief and Appendix for Appellant at 22A, Ohntrup (No. 85-1783). Thus, when the Third Circuit affirmed the verdict and entered judgment for plaintiffs, Morgan attempted to determine whether Makina wanted it to take any further action on their behalf.\(^\text{Id.}\) at 4. When its repeated inquiries met with no response, Morgan regarded its representation of Makina as ended, a termination which Makina later confirmed, and Morgan filed a motion for leave to withdraw.\(^\text{Id.}\)

\(^\text{16.}\) Ohntrup, 802 F.2d at 678.

\(^\text{17.}\) Judge Pollak acknowledged that the decision to deny Morgan’s motion to withdraw was “to some degree imposing an unwanted and very possibly uncompensated, in any event—compensated only with difficulty—burden, or set of burdens on Morgan, Lewis and Bockius,” but determined that “[t]hose burdens . . . go with the territory.” Brief and Appendix for Appellant at 40A (citing Transcript of November 25, 1985, at 22, Ohntrup v. Firearms Center Inc., 516 F. Supp. 1281 (E.D. Pa. 1981) (No. 76-0742)).

\(^\text{18.}\) 802 F.2d at 678. However, the court did grant the motion to withdraw as it pertained to individual attorneys, McConnell, who had retired, and Littleton, who had left the firm.\(^\text{Id.}\)
not appealable. Recognizing the policy of avoiding piecemeal review which underlies the finality requirement, the court observed that this policy has diminished significance after the district court has rendered final judgment, thus completely disposing of the merits of the case. Therefore, the Third Circuit reasoned that since the district court’s denial of Morgan’s motion to withdraw “completely settled the question of Morgan’s withdrawal,” and followed the judgment entered against Makina, Morgan’s appeal was properly before the court.

Turning to the merits of the case, the court first considered Morgan’s contention that the court’s denial of its motion had placed the firm in an “unacceptable ethical position” under the Model Code of Professional Responsibility. Acknowledging that the Code does require an

19. Id. Section 1291, relating to “[f]inal decisions of district courts,” provides in pertinent part: “The courts of appeal . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . . except where direct review may be had in the Supreme Court.” 28 U.S.C. § 1291 (1982) (emphasis supplied).

The Supreme Court has interpreted this language to mean that a party may appeal only after a final judgment on the merits has been entered. Firestone Tire & Rubber Co. v. Risjord, 449 U.S. 368, 374 (1981). In Risjord, the Supreme Court held that a district court order denying a motion to disqualify counsel was not an appealable order. Id. at 370. The Risjord Court emphasized that the underlying purposes of § 1291 are to promote efficient judicial administration and avoid piecemeal review. Id. at 374. However, the Third Circuit noted that Risjord was distinguishable from Ohntrup because Risjord involved a pre-trial motion, as opposed to the Ohntrup order which followed the entry of judgment. 802 F.2d at 678. The court stated that the policy of avoiding piecemeal review is likely to be less decisive after judgment. Id. (citing Plymouth Mut. Life Ins. Co. v. Illinois Mid-Continent Life Ins. Co., 378 F.2d 389, 391 (3d Cir. 1967)). As a result, the Third Circuit rejected the Ohntrups’ reliance on Risjord. 802 F.2d at 678.

20. Ohntrup, 802 F.2d at 678. The court noted that, especially in cases involving supplementary post-judgment orders, the finality requirement may be given a “practical rather than a technical construction.” id. (quoting Plymouth Mut. Ins. Co. v. Illinois Mid-Continental Ins. Co., 378 F.2d 391 (5d Cir. 1967) (orders following settlement agreement are appealable)).

21. Id. The court cited with approval the Seventh Circuit’s opinion in Sportmart, Inc. v. Wolverine World Wide, Inc., 601 F.2d 313, 316 (7th Cir. 1979) (“Most post-judgment orders are final decisions within the ambit of 28 U.S.C. § 1291 as long as the district court has completely disposed of the matter.”). Furthermore, if such orders were not considered final, no review would be available where there is little prospect of further proceedings following final judgment. Ohntrup, 802 F.2d at 678 (citing C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure § 3916, at 607 (1976)).

22. Ohntrup, 802 F.2d at 678.

23. Id.

24. Id. at 679 (citing Model Code of Professional Responsibility DR 2-110(B)(4) (1980)). DR 2-110(B)(4) of the Code mandates conditions for withdrawal from employment: “(B) Mandatory withdrawal. A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment. . . . if: . . . (4) He is discharged by his client. DR 2-110(B)(4) (1980). Notably, Pennsylvania has adopted the ABA Model Code with some revisions and has adopted this section intact.
attorney to withdraw its appearance when discharged by its client,\textsuperscript{25} the court pointed out that the mandatory withdrawal provision is qualified by another Code section which prohibits withdrawal absent judicial approval, where court permission is required by the local rules.\textsuperscript{26} Since a local rule of the Eastern District of Pennsylvania required court approval prior to an attorney’s withdrawal, unless a substitute attorney entered an appearance,\textsuperscript{27} the Third Circuit held that denying the firm’s motion did not place Morgan in conflict with the Code.\textsuperscript{28}

Secondly, the court rejected Morgan’s argument that the district court abused its discretion when it denied the firm’s motion to withdraw.\textsuperscript{29} In so holding, the court balanced the primary purposes of Local Rule 18 with the countervailing difficulties which Morgan might face were it required to remain in the case without a client.\textsuperscript{30} Specifically, the Third Circuit opined that the district court’s emphasis on the problems of communicating with a Turkish corporation, and its characterization of Makina as an “intractible [sic] litigant” supported the conclusion that Morgan’s withdrawal would prohibit effective communication with Makina and, thus, interfere with the efficient administration of post-

\textsuperscript{25} Ohntrup, 802 F.2d at 679 (citing \textit{Model Code of Professional Responsibility DR 2-110(B)(4)} (1980)). For the text of DR 2-110(B)(4), see supra note 24.

\textsuperscript{26} Ohntrup, 802 F.2d at 679 (citing \textit{Model Code of Professional Responsibility DR 2-110(A)(1)} (1980)). DR 2-110(B)(4) is qualified by DR 2-110(A)(1) which provides: “If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.” DR 2-110(A)(1) (1980).

\textsuperscript{27} E.D. Pa. R. 18(c). Local Rule 18(c) of the United States District Court for the Eastern District of Pennsylvania provides as follows: “An attorney’s appearance may not be withdrawn except by leave of court, unless another attorney of this court shall at the same time enter an appearance for the same party.” \textit{Id.}

\textsuperscript{28} Ohntrup, 802 F.2d at 679. Here, no substitute attorney entered an appearance, thus requiring Morgan to obtain approval by the district court in order to withdraw its appearance. \textit{Id.} The court thus rejected Morgan’s argument as lacking in merit and denied the firm’s motion to withdraw. \textit{Id.}

\textsuperscript{29} \textit{Id.}

\textsuperscript{30} \textit{Id.} Morgan argued that Makina’s dismissal of Morgan effectively nullified the firm’s authority to continue to actively represent Makina. \textit{Id.} Therefore, the court’s order, requiring active representation, merely created practical difficulties without aiding the Ohntrups’ ability to collect their judgment. \textit{Id.} The Third Circuit disagreed, and noted several compelling factors which supported its decision. First, the Ohntrups had won a sizeable judgment against Makina and had begun proceedings to collect on that judgment. \textit{Id.} Secondly, the problems of maintaining contact with the defendant were exacerbated by the facts that Makina was located in Turkey, was wholly owned by the Turkish government, many of its officers did not speak English, and Turkey itself lacked modern communication techniques. \textit{Id.} When balanced, the court weighed these factors to require Morgan to remain in the case. \textit{Id.} For a discussion of the potential difficulties encountered by a law firm whose discharge has been “forced,” see supra note 17 and infra notes 51-53 and accompanying text.
judgment proceedings. Therefore, the Third Circuit held that the district court's finding, that the "court's need for effective communication and efficient administration" outweighed Morgan's concerns, did not constitute an abuse of discretion.

However, the Third Circuit did reject the district court's suggestion that Morgan should be required to continue its representation until Makina arranged for alternate counsel. The appellate court concluded that a law firm may withdraw its appearance when it has satisfactorily demonstrated to the trial court "that its appearance serves no meaningful purpose, particularly insofar as an opposing interest is concerned."

In Ohntrup, the Third Circuit recognized that under certain circumstances it may be unfair to allow an attorney to withdraw even if he is discharged by his client. In identifying the need to limit an attorney's

31. Id. These observations were based on the record before the court. Id. For a further discussion of these problems, see supra note 30.

32. Id. In contrast to the Third Circuit's conclusory statements, Judge Pollow noted, in a well-reasoned and carefully articulated opinion from the district court bench, in which he denied Morgan's motion to withdraw:

Our adversary system contemplates that each party, and most especially when a party is an inadamant [sic] one, be represented by an attorney or attorneys who, among other things, have the burden of maintaining communication. The rules of this court contemplate that litigation be carried on by parties who they themselves are situated in this district or have attorneys situated in this district. . . . [T]his court has an institutional obligation to see to it that things proceed as effectively as may be.

33. Ohntrup, 802 F.2d at 679. The court cited Washington v. Sherwin Real Estate, Inc., 694 F.2d 1081 (7th Cir. 1982) for the applicable abuse of discretion standard. Id. In Sherwin, the Seventh Circuit found no abuse of discretion by the trial court in granting the attorney's motion to withdraw, "since where an attorney feels he will be unable . . . to adequately represent his client he has a duty to withdraw from the case." 694 F.2d at 1088 (quoting Green v. Forney Eng'g Co., 589 F.2d 243, 247-48 (5th Cir. 1979)). The court stated that abuse of discretion could only be found "where no reasonable man could agree with the district court." Sherwin, 694 F.2d at 1087 (quoting Smith v. Widman Trucking & Excavating, Inc., 627 F.2d 792, 795-96 (7th Cir. 1980)).

The Third Circuit made particular note of the short time period between the entry of judgment against Makina and the district court's decision on Morgan's motion to withdraw, as well as the representation that plaintiffs contemplated further discovery in aid of execution. Ohntrup, 802 F.2d at 680. Since the district court's findings were not "clearly erroneous," the Third Circuit refused to hold that the lower court had abused its discretion. Id.

34. Ohntrup, 802 F.2d at 679. The court reasoned that if withdrawal was not available unless and until the litigant arranged for substitute counsel, withdrawal by an attorney might never be possible in this type of situation. Id. at 679-80.

35. Id. at 680. The court's decision was without prejudice to Morgan's ability to renew its motion at a "later appropriate time," even absent the appearance of substitute counsel, although the court presumed that Morgan would not withdraw until the Ohntrups had "exhausted meaningful efforts to satisfy their judgment." Id. at 680 & n.1.

36. Id. at 679; see also ITT Indus. Credit Co. v. Lawco Energy, Inc., 86
ability to withdraw from a case, the Ohntrup court balanced the interests of the parties and the court. 37 Unfortunately, in affirming the district court’s decision denying Morgan’s leave to withdraw, the Third Circuit provided little reasoning or guidance 38 for future cases.

It is submitted that the Third Circuit’s decision in Ohntrup necessarily diminishes the significance of a client’s well-established right to discharge his attorney, 39 since the right to discharge an attorney is nugatory unless the attorney is thereafter required to withdraw. 40 Nevertheless, it may be appropriate to limit the right to discharge an attorney when a client discharges his counsel in an attempt to avoid its legal obligations. 41 In Ohntrup, Makina’s apparent refusal to communicate

F.R.D. 708, 713 (S.D. W. Va. 1980) (withdrawal denied since effective court administration requires attorney to provide court with means to maintain communications with client); Thomas v. National State Bank, 628 F.2d 188, 189 (Colo. Ct. App. 1981) (withdrawal refused when attorney’s withdrawal would be prejudicial to all parties); In re Marriage of Milovich, 103 Ill. App. 3d 596, 613, 434 N.E.2d 811, 826 (1982) (withdrawal denied upon consideration of whether withdrawal would “unduly prejudice the other party or interfere with the administration of justice,” and whether party seeking withdrawal would be prejudiced by denial) (citation omitted); Farkas v. Sadler, 119 R.I. 35, 41, 375 A.2d 960, 963 (1977) (withdrawal refused after considering reasons necessitating withdrawal, efficient and proper function of court and effect that granting or denying motion will have on parties to litigation).

37. 802 F.2d at 679. The countervailing interests which the Third Circuit attempted to weigh included: “(1) loyalty to his client; (2) respect for the tribunal; and (3) fairness to others.” L. PATRERSON, LEGAL ETHICS: THE LAW OF PROFESSIONAL RESPONSIBILITY 9 (2d ed. 1981).

The district court obviously recognized the countervailing interests presented in this case: “No court is going to be eager to keep an attorney-client relationship going on when it has sort of intrinsically deteriorated. But the Court has institutional needs that are inclusive of, but to some extent transcend, the particular interests of [Makina] and [Morgan] and [the Ohntrups] . . . .” Brief and Appendix for Appellant at 26A (citing Transcript of November 25, 1985 at 8, Ohntrup v. Firearms Center Inc., 516 F. Supp. 1281 (E.D. Pa. 1981) (No. 76-0742)). This language from the district court’s bench opinion indicates a conscious and careful balancing of the interests involved, while the Third Circuit merely defined the purposes of Local Rule 18(c) as “providing for communications between the litigants and the court, as well as ensuring effective court administration.” Ohntrup, 802 F.2d at 679. One may only speculate, however, as to whether the Third Circuit, by its failure to articulate a fuller analysis, intended to implicitly adopt the lower court’s reasoning. For the text of Local Rule 18(c), see supra note 27 and accompanying text.

38. See Ohntrup, 802 F.2d at 679-80. In fact, the Third Circuit cited no case law in support of its decision on the merits of Morgan’s appeal. The court did cite a Seventh Circuit case adopting “abuse of discretion” as the proper standard by which to review the district court’s decision denying leave to withdraw. Id. at 679 (citing Washington v. Sherwin Real Estate, Inc., 694 F.2d 1081, 1087 (7th Cir. 1982)). For a discussion of Sherwin, see supra note 33.

39. For a discussion of a client’s right to discharge his attorney at any time, see supra note 6 and accompanying text.

40. C. WOLFRAM, supra note 6, § 9.5.4, at 552.

41. Id. § 9.5.2, at 546. Discharging his attorney does not necessarily relieve the client of all responsibility; indeed, it may trigger further obligations associ-
with Morgan, and its "intractable" disposition during the proceedings, made it reasonable to assume that by discharging its attorney, Makina hoped to avoid satisfying the obligations imposed by the substantial judgment entered against it by the district court. Clearly, it is unfair to require a plaintiff to shoulder the burden and expense of litigating a case to verdict, only to be left with a defendant who refuses to satisfy a judgment and who is beyond the reach of the court. Therefore, it is suggested that the Third Circuit correctly evaluated Makina's right to discharge its attorney as insubstantial when balanced against the plaintiffs' rights to collect their judgment.

Interestingly, however, the Ohntrup court's opinion was virtually void of any discussion of the potential ramifications of its decision on the other participants in the lawsuit. Specifically, the Ohntrup court failed to address adequately the significant effect the court's opinion will have on the practicing attorney who might find himself forced to remain in a case to "represent" a client who has discharged him. It is suggested that in Ohntrup, as well as in most other cases, requiring the law firm to represent an adamant party like Makina will accomplish little when that party does not wish to be so represented.

Although it is arguable that Morgan's continued representation was the only reasonable means for the court to communicate with Makina and supervise Makina's post-judgment conduct, this argument ignores

42. See 802 F.2d at 678-79.
43. Id. at 679. If Morgan were permitted to withdraw, the court would be "without the possibility of effective communication with Makina, as well as without a reliable mechanism for responsible supervision of the post-judgment aspects of this litigation." Id.
44. Id.
45. Id. The court acknowledged the possibility that Morgan might face "practical problems" in its continued representation, but dismissed that argument without discussion. Id.
46. Id. Despite any practical problems Morgan might encounter in the continued "active representation" required by the district court, the court concluded that "Morgan's argument fails to pay adequate attention to the purposes of Local Rule 18(c) and the difficulties the district court would face were Morgan granted leave to withdraw at this time." Id. The court apparently sympathized with the Ohntrups' unsuccessful efforts to collect a substantial judgment from a government-owned foreign corporation, which had no American-based assets, lacks the capacity to communicate in English, and which refused to pay the judgment against it. Id. The court also recognized the district court's need for "responsible supervision of the post-judgment aspects of this litigation," and noted that Local Rule 18 is intended to ensure effective communication and efficient court administration. Thus, the court concluded that the district court had "fairly balanced these concerns." Id.
47. Id. at 679. Morgan articulated a willingness to continue to forward whatever documents to Makina that the court would require as a condition for withdrawal until Makina had appointed substitute counsel, in order to conform with the purpose of Local Rule 18(c) of maintaining effective communication
It is suggested that in light of Makina's status as a foreign corporation and its past refusal to cooperate, it is reasonable to expect

between Makina and the court. Reply Brief for Appellant at 2, Ohntrup (No. 85-1783). However, Morgan suggested that the continued active representation required by the district court's order was an “untenable application of Rule 18(c),” since that representation would only create “unnecessary ethical and practical problems” for Morgan without aiding the Ohntrups in collecting their judgment. Id. at 2-4.

 Reply Brief for Appellant at 2-4, Ohntrup (No. 85-1783). Morgan argued that once dismissed, it lacked authority to continue active representation of Makina as the court's order required, thus creating “practical problems” for the firm without facilitating the plaintiffs' efforts to collect their judgment. Id. The court acknowledged that, practically speaking, Morgan could do little to compel the uncooperative defendant to satisfy the judgment. Ohntrup, 802 F.2d at 679. Nevertheless, viewing Morgan's past ability to contact Makina as plaintiffs' only hope of recovering their judgment, the court found that even this limited possibility was sufficient to require Morgan to remain in the case. Id.

Morgan argued that once dismissed, it lacked authority to continue active representation of Makina as the court's order required, thus creating “practical problems” for the firm without facilitating the plaintiffs' efforts to collect their judgment. Id. The court acknowledged that, practically speaking, Morgan could do little to compel the uncooperative defendant to satisfy the judgment. Ohntrup, 802 F.2d at 679. Nevertheless, viewing Morgan's past ability to contact Makina as plaintiffs' only hope of recovering their judgment, the court found that even this limited possibility was sufficient to require Morgan to remain in the case. Id.

The court did not indicate whether the mere fact that Makina is a foreign corporation would be sufficient in itself to mandate Morgan's continued representation. Ohntrup, 802 F.2d at 679. The necessity for corporate counsel raises two issues. First, it is well-established that a corporation, unlike an individual, cannot proceed in a lawsuit pro se. Jones v. Niagara Frontier Transp. Auth., 722 F.2d 20, 22 (2d Cir. 1983) (“[A] corporation, which is an artificial entity that can only act through agents, cannot proceed pro se.”); Move Org. v. United States Dep't of Justice, 555 F. Supp. 684, 693 (E.D. Pa. 1983) (“Because organizational personality is a legal fiction, appearance in propria persona is impossible. Thus, the courts have repeatedly held that corporations ... must be represented by counsel.”); Turner v. American Bar Ass'n, 407 F. Supp. 451, 476 (N.D. Tex., W.D. Pa., N.D. Ind., D. Minn., S.D. Ala., W.D. Wis. 1975) (“Corporations and partnerships, both of which are fictional legal persons, obviously cannot appear for themselves personally .... They must be represented by licensed counsel.”), aff'd sub nom. Pilla v. American Bar Ass'n, 542 F.2d 56 (8th Cir. 1976), aff'd mem. sub nom. Taylor v. Montgomery, 539 F.2d 715 (7th Cir. 1976).

However, a court may order a corporation to retain substitute counsel, instead of requiring an “unknown” attorney to continue to represent an intractable litigant. Shapiro, Bernstein & Co. v. Continental Record Co., 386 F.2d 426, 427 (2d Cir. 1967). Applying that alternative to Ohntrup, if Morgan had been allowed to withdraw its appearance, the court could have ordered Makina to retain a new attorney. Thereafter, had Makina failed to comply, the court could have entered appropriate sanctions against it. See Shapiro, 386 F.2d at 427 (defendant corporation's refusal to appoint new counsel in "cavalier disregard for a court order" justified judicial relief); Hritz v. Woma Corp., 792 F.2d 1178, 1184 (3d Cir. 1984) (no abuse of discretion "to enter a default judgment to sanction a party who has callously disregarded repeated notices of a judicial proceeding"). However, under the facts presented in Ohntrup, this may not be a viable alternative.

Makina is not only a corporation, but it is also owned wholly by the Turkish government, is located in Turkey, and claims that it has done no business with American companies since 1975. 802 F.2d at 679. If a foreign defendant refuses to cooperate, the court would not have the power to impose sanctions or compel its cooperation as it would with a United States resident. Furthermore, Makina apparently has no assets in this country which might be attached in order to execute and enforce the judgment. Brief and Appendix for Appellant at 31A (citing Transcript of November 25, 1985 at 13, Ohntrup v. Firearms Center Inc., 516 F. Supp. 1281 (E.D. Pa. 1981) (No. 76-0742)).
that Makina would continue to ignore the court's directives. By requiring Morgan to remain as Makina's counsel, the Ohntrup court suggests that Morgan can compel Makina to do that which the Ohntrups and the court have been unable to do. It is submitted that such a suggestion is misplaced, especially in light of Makina's past conduct and its clear desire not to retain Morgan as its counsel. Thus, requiring Morgan to remain in the case, despite Makina's objection and refusal to satisfy the judgment, is unlikely to advance the plaintiffs' claim. Instead, it only serves to impose an unwarranted burden on the firm.

It appears, therefore, that Makina's status as a foreign corporation could have been a compelling factor in the court's balancing of the equities. However, that was apparently not the basis of the Third Circuit's decision, as the court expressly did "not consider the Ohntrup's [sic] argument that granting Morgan leave to withdraw would violate the prohibition against corporations appearing in court unrepresented by counsel." 802 F.2d at 680 n.1.

50. Judge Pollak, of the district court, described Makina as "a client that presented . . . more than the usual characteristics of intractability that remote clients can offer." Brief and Appendix for Appellant at 34A (citing Transcript of November 25, 1985 at 16, Ohntrup v. Firearms Center Inc., 516 F. Supp. 1281 (E.D. Pa. 1981) (No. 76-0742)). The difficulties in this regard could foreseeably be magnified if Morgan, which is undoubtedly the single contact Makina has with the proceedings in this case, were permitted to withdraw. 802 F.2d at 678.

51. Brief and Appendix for Appellant at 15. Morgan refuted that suggestion as unfounded, since it exerts no control over its former client, Makina. In Judge Pollak's opinion from the bench, he acknowledged that Morgan may be "no more likely to be effective in communicating with Makina than [plaintiff's counsel]." Brief and Appendix for Appellant at 38A (citing Transcript of November 25, 1985 at 20, Ohntrup v. Firearms Center Inc., 516 F. Supp. 1281 (E.D. Pa. 1981) (No. 76-0742)). However, as that issue was not proven, it was simply a "matter for speculation" which the district court declined to pursue. Id.

52. It appears that Makina had made it clear that it did not want Morgan to continue to represent it with respect to the Ohntrups' claim. Ohntrup, 802 F.2d at 678. Clearly, Morgan does not have the power to force Makina, an unwilling defendant, to pay. Nor does it have authority to bind its former client by any unauthorized acts. See, e.g., Carlson v. Nopal Lines, 460 F.2d 1209, 1211 (5th Cir. 1972) (attorney cannot insist on maintaining attorney-client relationship after discharge); Archbishop v Karlak, 450 Pa. 535, 539, 299 A.2d 294, 296 (1973) (attorney cannot bind client by his own actions without client's knowledge or consent); Garnet v. D'Alonzo, 55 Pa. Commw. 263, 265, 422 A.2d 1241, 1242 (1980) (in absence of express authority, attorney is without power to compromise or settle client's claim).

Furthermore, who would pay Morgan for its services? Although Morgan may have a claim in quantum meruit against Makina for costs of its services, if Makina refuses to satisfy its obligation under a legal judgment, it is unlikely to voluntarily pay Morgan. Notably, there would be no contract claim for further services rendered, since Makina terminated the contract by discharging them. For a discussion of recovery based on quantum meruit, see C. Wolfram, supra note 6, § 9.5.2, at 546 n.51; Annotation, Limitation to Quantum Meruit Recovery, Where Attorney Employed Under Contingent Fee Contract Is Discharged Without Cause, 92 A.L.R. 3d 690 (1979).

53. Attorneys "may not reasonably be required to soldier on in the face of their clients' declared refusal and inability to compensate them." Silverman v. Senft, [No. 84 Civ. 393-CSH,] slip op. (S.D.N.Y. July 31, 1986). In Silverman, defendants were without funds and wished to discharge their attorney and ap-
Of course, the interest of the Ohntrups seems compelling as well.\textsuperscript{54} The Ohntrups are judgment creditors trying to enforce their judgment against an uncooperative foreign defendant corporation.\textsuperscript{55} In reality, however, the position of the Ohntrups is no different than that of a judgment creditor who seeks to enforce his claim against a judgment-proof defendant or a defendant who has entered bankruptcy.\textsuperscript{56} Unlike the typical judgment creditor, however, the Ohntrups' position is arguably complicated by the fact that the defendant is a wholly foreign corporation which has no assets within reach of the court. Therefore, the root of their problem may really be the overextension of a "minimum contacts" analysis in which the court exercised jurisdiction over a party against whom it had no practical means of enforcing a subsequent judgment.\textsuperscript{57} It is submitted that as a result of this overextension, the Ohntrup
court was forced to employ the Code to require Morgan to remain in the case for the sole purpose of providing the court with a "minimum contact" with the foreign-based Makina.58

Additionally, the Ohntrup court aptly noted that although withdrawal is required when an attorney is discharged by his client,59 mandatory withdrawal is qualified by a requirement that counsel seek court approval where mandated by local rules of court.60 In Ohntrup, however, the Third Circuit interpreted the Code as placing that approval within the court's discretion, without adequately qualifying the extent of such discretion.61 The Ohntrup court arguably did attempt to qualify the dis-

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58. It is submitted that using the Disciplinary Rules in this manner, to justify personal jurisdiction over a foreign defendant, is not the purpose for which these rules were intended. The Code's Preamble and Preliminary Statement set forth the aims and purposes for which the Code was promulgated:

The Model Code is designed to be adopted by appropriate agencies both as an inspirational guide to members of the profession and as a basis for disciplinary action when the conduct of a lawyer falls below the required minimum standards stated in the Disciplinary Rules. . . . A lawyer should ultimately be responsible for the conduct of his employees and associates in the course of the professional representation of the client. MYODEL CODE OF PROFESSIONAL RESPONSIBILITY Preliminary Statement (1980).

Notably, the Preliminary Statement does not suggest that the lawyer be held responsible for the conduct of his client, nor that the rules be used to maintain jurisdiction over a party. See id.

59. 802 F.2d at 679 (citing MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 2-110(B)(4) (1980)). For the text of DR 2-110(B)(4), see supra note 24.

60. 802 F.2d at 679 (citing MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 2-110(A)(1) (1980)). Although DR 2-110(B) provides for "[m]andatory withdrawal," the Code injects an element of discretion through DR 2-110(A)(1) by requiring court permission for withdrawal in compliance with the rules of a tribunal. It is suggested that read together, those provisions may be interpreted to mean that if discharged by his client, counsel's request for court permission to withdraw is mandatory and, if granted, counsel shall withdraw. In the Eastern District of Pennsylvania, Local Rule 18(c) requires counsel to obtain court approval before withdrawing. E.D. PA. R. 18(c). For the text of these three rules, see supra notes 24, 26 & 27. See also C. WOLFRAM, supra note 6, § 9.5.1, at 544 (when lawyer wishes or is forced to terminate representation, compliance with applicable local rules governing withdrawal from pending litigation is "overriding requirement" (citing MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 2-110(B)(4) (1980)).

61. 802 F.2d at 679. The court did suggest that the district court's decision was reviewable under an "abuse of discretion standard." Id. However, because the Third Circuit held that there was no abuse of discretion in this case, the court did not indicate what would constitute such an abuse in the context of a court's refusal to grant a motion for leave to withdraw. See id.

The only prior case in the Eastern District of Pennsylvania discussing denial of a motion for leave to withdraw is Brand v. NCC Corp., a case which bears little factual similarity to this case. 540 F. Supp. 562 (E.D. Pa. 1982). In Brand, counsel for defendant entered his appearance six months after default judgment had been entered against the defendant, and then participated in several settlement
district court's discretion by stating that a firm may withdraw when it demonstrates that "its appearance serves no meaningful purpose." 62 However, the court defeated this alleged qualification of the district court's discretion by requiring the firm to make this demonstration "to the satisfaction of the district court." 63

The vague standard for withdrawal approved by the Ohntrup court lacks predictability and makes it difficult, if not impossible, for counsel to know whether he will in fact be permitted to withdraw, even after termination of the employment relationship by his client. As a result, an attorney must remain in an action in which he has no client, and thus, no authority to act on its behalf. 64 It is submitted that the dubious behavior of a former client does not justify forcing counsel to remain in a case, merely as a "conduit for service." 65 in post-judgment proceedings after

conferences. Id. at 564. At the last conference prior to the hearing, the attorney informed the court that if those settlement efforts failed, "his client had instructed him to cease representation." Id. When efforts to reach a settlement did fail, he submitted his motion for leave to withdraw. Id. The court stated that defendant could not have counsel appear on its behalf and yet limit counsel's authority to participating in settlement negotiations. Id. at 565. Citing Local Rule 18(c), the district court stated that "[l]eave of court for withdrawal, absent the simultaneous appearance of substitute counsel, is within the court's discretion. . . . [T]he court, in its discretion, denied leave." 540 F. Supp. at 564.

While the Ohntrup decision is not inconsistent with Brand, it, like Brand, fails to qualify the extent of the district court's discretion. See 802 F.2d at 679-80. In addition, the Ohntrup court failed to address the issue of when an attorney should be permitted to withdraw, or, conversely, required to remain in a case. See id.

62. 802 F.2d at 680. Specifically, the court stated: "[W]e conclude that a law firm is entitled to withdraw once the firm demonstrates to the satisfaction of the district court that its appearance serves no meaningful purpose, particularly insofar as an opposing interest is concerned." Id.

63. Id. It is submitted that this language leaves the discretion of the district court in the same undefined and unguided state that it was in prior to the Ohntrup decision. Interestingly, the Ohntrup court suggested that Morgan should at least remain in the case until the Ohntrups "have exhausted meaningful efforts to satisfy their judgment." Id. at 680 n.1. While this suggestion may limit Morgan's duty as compared to the duty defined by the district court, it does little to qualify the discretion of the district court.

64. See Carlson v. Nopal Lines, 460 F.2d 1209, 1211 (5th Cir. 1972) (attorney may not insist that attorney-client relationship continue); Garnet v. D'Alonzo, 55 Pa. Commw. 263, 265, 422 A.2d 1241, 1242 (1980) (absent express authority, attorney may not "undertake unauthorized acts which may result in the surrender of any substantial right of the client").

65. Finck v. Finck, 354 N.W.2d 198, 201 (S.D. 1984). The facts of Finck merit discussion. Following divorce proceedings in which a husband was ordered to pay alimony, he disappeared and stopped making such payments. Id. at 199. Since his whereabouts were unknown, the wife instituted proceedings to garnish his Navy retirement pay by means of service on the husband's attorney. Id. at 200. After repeated unsuccessful attempts to communicate with his client, the husband's attorney filed a motion to withdraw. Id. The Supreme Court of South Dakota held that the trial court abused its discretion by refusing to grant withdrawal without substitute appearance. Id. Although the court appreciated "the plight of appellee, who will be forced to seek other remedies should this
the client has voluntarily terminated the attorney-client relationship.\footnote{66} 

Moreover, it is submitted that the undefined discretion exercised by the district court and approved by the Third Circuit in \textit{Ohntrup}\footnote{67} will likely invite an increase in litigation. If withdrawal is not made mandatory upon discharge by one’s client\footnote{68} or if clear boundaries are not placed on the district court’s discretion,\footnote{69} the courts will be forced to make an ad hoc determination in each case. Furthermore, \textit{Ohntrup} offers little guidance by which courts may make this determination.\footnote{70} If the court’s decision is based upon a balance of the parties’ competing interests, when do the equities tip the scale of justice to require an attorney to remain in a case after his client has terminated the attorney-client relationship?\footnote{71}

\begin{itemize}
    \item \textit{Id.} at 200-01. In noting that at some point, the attorney-client relationship must be allowed to end, the court recognized that an attorney could not “fairly represent a client, in the best interests of that client, when the client insists on remaining incommunicado.” \textit{Id.} at 201.
    \item When faced with countervailing interests similar to those in \textit{Ohntrup}, the \textit{Finck} court found, in a well-reasoned opinion, that the equities balanced the opposite way, in favor of permitting withdrawal. \textit{Id.} The potential burden on the attorney outweighed any inconvenience to Mrs. Finck, as there was still an available avenue through which her judgment could be satisfied. See \textit{id.} at 200. On the other hand, the \textit{Ohntrup} court emphasized the lack of alternate effective means of communication, but gave little attention to the potential difficulties facing the attorney. See \textit{802 F.2d} at 679. It is also interesting to note that in \textit{Finck} there was no indication that the attorney had been discharged by his client, as was the case in \textit{Ohntrup}. For a discussion of the countervailing interests weighed by the court in \textit{Ohntrup}, see \textit{supra} notes 37 & 46 and accompanying text.
    \item 66. If Makina has not authorized the law firm to act on its behalf, Morgan has no control over it. Practically speaking, therefore, when the plaintiffs serve their papers on Morgan, Morgan can only turn around and mail them to Makina. That alone would hardly seem to be justification for refusing to allow counsel to withdraw. At that point, the attorney is “literally acting as a post office.” Brief and Appendix for Appellant at 27A (citing Transcript of November 25, 1985 at 8, \textit{Ohntrup} v. Firearms Center Inc., 516 F. Supp. 1281 (E.D. Pa. 1981) (No. 76-0742)).
    \item 67. \textit{See 802 F.2d} at 679-80; \textit{see also Brand v. NCC Corp.}, 540 F. Supp. 562 (E.D. Pa. 1982). For a discussion of Brand, see \textit{supra} note 61.
    \item 68. \textbf{Model Code of Professional Responsibility} DR 2-110(C) (1980) lists grounds for permissive withdrawal. Specifically, DR 2-110(C)(5) provides for such permissive withdrawal of the attorney if: “His client knowingly and freely asssents to termination of his employment.” \textbf{Model Code of Professional Responsibility} DR 2-110(C)(5) (1980). If a court may, in its discretion, deny permission to withdraw when a client fires his attorney, it is questionable whether there is a material difference between DR 2-110(B)(4) and DR 2-110(C)(5). For the text of DR 2-110(B)(4), see \textit{supra} note 24.
    \item 69. For a discussion of the court’s discretion, see \textit{supra} notes 60-63 and accompanying text.
    \item 70. \textit{See 802 F.2d} at 679-80. The court did indicate that a law firm may be permitted to withdraw at some point if the court is satisfied that “its appearance serves no meaningful purpose.” \textit{Id.} at 680.
    \item 71. Relevant case law provides little elaboration on this vague standard.
\end{itemize}
While it is arguable that the Ohtrup court reached an equitable decision on the facts of this case,\textsuperscript{72} the effect of the Ohtrup decision is to create a practical uncertainty for the practitioner. Although the Code directs mandatory withdrawal when an attorney is discharged by his client,\textsuperscript{73} Ohtrup empowers a court with discretion to force an attorney to remain in a case on behalf of a former client who is hostile to the attorney’s representation. Although the Ohtrup court suggested that an attorney may withdraw when he demonstrates his representation “serves no meaningful purpose,” it is submitted that this language fails to guide courts or practitioners as to the standard to be applied.\textsuperscript{74} In addition, if

\textit{See, e.g.,} Gandy v. Alabama, 569 F.2d 1318, 1323-24 (5th Cir. 1978) (withdrawal allowed when no unique, countervailing factors to balance against granting motion, other than traditional interests of judicial economy); Leedy v. Hartnett, 510 F. Supp. 1125, 1126 (M.D. Pa. 1981) (withdrawal permitted when “[i]t is not desirable to require counsel to continue to serve when there exists no chance of his being compensated for his services and . . . there is no reason to expect any other counsel to undertake to represent [defendant]”), aff’d mem., 676 F.2d 686 (3d Cir. 1982); Finck v. Finck, 354 N.W.2d 198, 201 (S.D. 1984) (withdrawal granted because “at some point” attorney-client relationship must be allowed to cease). \textit{But see} ITT Indus. Credit Co. v. Lawco Energy, Inc., 86 F.R.D. 708, 713 (S.D. W. Va. 1980) (withdrawal denied since effective court administration requires attorney to provide court with means to maintain communications with client); Thomas v. National State Bank, 628 P.2d 188, 189 (Colo. Ct. App. 1981) (withdrawal refused when attorney’s withdrawal would be prejudicial to all parties); \textit{In re} Marriage of Milovich, 105 Ill. App. 3d 596, 615, 434 N.E.2d 811, 826 (1982) (withdrawal denied upon consideration of whether withdrawal would “‘unduly prejudice the other party or interfere with the administration of justice,’ ” and whether party seeking withdrawal would be prejudiced by denial) (citation omitted); Farkas v. Sadler, 119 R.I. 35, 41, 375 A.2d 960, 963 (1977) (withdrawal refused after considering reasons necessitating withdrawal, efficient and proper function of court and effect that granting or denying motion will have on parties to litigation).

\textsuperscript{72} For a discussion of the equities involved in this case, see supra notes 36-58 and accompanying text.

\textsuperscript{73} For a discussion of mandatory and permissive withdrawal under the Code, see supra notes 24 & 68 and accompanying text.

\textsuperscript{74} The Ohtrup decision does not address a practically significant question that is raised: whether and, if so, to what extent the court may impose sanctions for failure to comply with a court order under Fed. R. Civ. P. 37(b) where the court requires an attorney to remain in a case after being dismissed by his client. While none of the enumerated sanctions of Rule 37(b)(2) would be applicable to this post-judgment situation, the final paragraph of Rule 37(b)(2) provides as follows:

In lieu of the foregoing orders . . . the court \textit{shall} require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney’s fees, caused by the failure, \textit{unless} the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

Fed. R. Civ. P. 37(b)(2) (emphasis added). Notably, the rule makes the imposition of such sanction mandatory, unless “‘the disobedient party . . . show[s] that his failure is justified or that special circumstances make an award of expenses unjust.” \textit{Id.} advisory committee’s note.

It is apparent in Ohtrup that an attempt to impose such a sanction on Makina would meet with little chance of success, since Makina refused even to
the Third Circuit found that, based on the facts on Ohntrup, continued representation was appropriate, one must wonder what it will take to find representation no longer meaningful.

It is arguable that the mistake Morgan made was not in moving to withdraw, but in moving to withdraw too soon. It is suggested that in future cases, when an attorney is discharged by his client, the law firm should carefully develop a complete record to demonstrate, not only the client's termination of the relationship, but also the extent to which the attorney is thereafter unable to communicate with or effectively represent this former client. In that case, the law firm would at least have a factual record to bring before the court on which it could base its assertion that it was acting merely as a "conduit for service."

Aware of the result in Ohntrup, it is possible that lawyers in the Third Circuit may want to reconsider representing "Makina-like" clients in the first place, thereby making it difficult for such individuals to secure representation. Furthermore, as a result of the Ohntrup decision, courts will be required to make ad hoc determinations of each motion to comply with the court-entered judgment against it. Therefore, the more significant question is whether the court may impose this sanction on Morgan, as Makina's attorney. While the language of the rule expressly provides for the imposition of expenses on the attorney, such an imposition would result in sanctioning an attorney for the utter misbehavior of a client who, in fact, has terminated that attorney-client relationship. It is submitted that for the court first to refuse to allow the attorney to withdraw after being discharged, and then to impose additional sanctions on that attorney for the continued noncompliance of his former client, would work a gross injustice. On the other hand, if Morgan proves that "special circumstances make an award of expenses unjust" and, thus, the court refrains from imposing such expenses on the attorney, it would appear that the court is essentially left without effective available sanctions. However, the Third Circuit failed to address the question of sanctions and the potential problems of court administration which flow from the Ohntrup decision.

For a discussion of the lack of guidance given by the Ohntrup court and the problems related thereto, see supra notes 59-71 and accompanying text.

75. See 802 F.2d at 680. The court stated that it could not say that the district court abused its discretion, "particularly in light of the short lapse of time" between entry of judgment and the decision denying the motion to withdraw. Id. It is unclear, however, just how long Morgan should have waited, especially in light of the facts which seemingly indicate that its representation served "no meaningful purpose." See id. at 679-80; see also Brief and Appendix for Appellant at 38A-40A (citing Transcript of November 25, 1985 at 20-22, Ohntrup v. Firearms Center Inc., 516 F. Supp. 1281 (E.D. Pa. 1981) (No. 76-0742)).

76. It is submitted that Morgan might have made a factual record documenting the following: each and every phone call to Makina, whether the call was received and, if so, by whom and the content of the conversation; any letters, motions or documents from plaintiffs or the court which Morgan received and merely forwarded to Makina; copies of any letters sent by Morgan to Makina, or received by Morgan from Makina, documentation as to receipt thereof, and whether the letters received any response; and any other communication, or a lack of communication, between Morgan and Makina. Perhaps this type of record would be sufficient to "satisfactorily demonstrate" to the court that Morgan's representation no longer served any "meaningful purpose."
requesting leave to withdraw because of discharge by a client. When these factors are added to the scale, one may wonder whether the equi-
ties still balance in favor of refusing to grant counsel leave to withdraw.*

Kristine Y. Schmidt

*On October 16, 1987, The Supreme Court of Pennsylvania issued an or-
der adopting a new Code of Professional Responsibility [hereinafter Code] and
rules of Professional Conduct, which shall take effect on April 1, 1988. Although not specifically applicable to the Ohntrup case itself, the author deemed it appropriate to mention the changes relevant to those rules regulating attorney withdrawal. Rule 1.16 of the new Code regulates conditions for “declining or terminating representation.”

Rule 1.16(a) essentially is the counterpart of Model Code DR 2-110(B), as it lists conditions in which the attorney shall withdraw, and provides as follows: “Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a cli-
ent if . . . (3) the lawyer is discharged.” Code, Rule 1.16(a). For the text of DR 2-
110(B)(4), see supra note 24. This rule is qualified on its face by reference to paragraph (c), which provides: “When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.” Code, Rule 1.16(c). While this provision qualifies withdrawal and is, therefore, similar to DR 2-110(A)(1), the language of the new Code suggests that the court’s power to order a lawyer to continue representation is somewhat broader, as it is not limited to those cases where “permission . . . is required by rules of the tribunal,” as was true under the Model Code. For the text of DR 2-110(A)(1), see supra note 26. Finally, paragraph (b) of Rule 1.16 provides conditions under which a lawyer may withdraw, which is similar to DR 2-110(C) that provides for permissive withdrawal.

It is arguable that the new Code eliminates some of the tension between the Model Code and local rules of court which required court permission prior to withdrawal. Because the Code includes a provision, Rule 1.16(c), which implicitly authorizes a court to order a lawyer to continue representation, the Code appears to provide the courts with even greater authority to exercise their discretion in that decision. However, neither the rule nor the comment thereto provide any guidance as to how a court should exercise that discretion. Therefore, it is submitted that the court’s decision in Ohntrup would not be affected by the new Code. However, the corollary to that proposition is also true, that the uncertainties and lack of guidance of the Ohntrup decision remain unresolved.