

HELP! MY CLIENT ISN'T PAYING ME!

BY KIRALYN LOCKE AND JESSICA KLANDER

Senario 1: Despite repeated requests and reminders, your client has not paid your legal fees. Scenario 2: Your neighbor is waving at you through their window. You enthusiastically wave back, only to realize they are simply washing their window. What do these two scenarios have in common? Not a lot, actually. However, one thing they do have in common is that they both can make for an uncomfortable situation.

What should an attorney do if faced with the uncomfortable situation of a client who has not paid their invoice? This article explores the actions an attorney should take – and the actions that should be avoided – when a client is not paying the bill.

CAN YOU WITHDRAW FROM REPRESENTATION?

Ordinarily, a lawyer may not withdraw from representation if it will cause a material detriment to the client's legal position. A material detriment could occur when a lawyer attempts to withdraw from representation the evening before a trial, with no justification other than

“the client is annoying.” Taking such an action could result in a violation of the Rules of Professional Conduct.

There are situations, however, in which withdrawing from representation is both ethical and acceptable. One such situation is when a client has not paid the lawyer's invoice for legal services. Absent an agreement to the contrary, lawyers are not expected to work for free.

According to the Model Rules of Professional Conduct, a lawyer may withdraw from representation when “the 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 unless the obligation is fulfilled.” MRPC, 1.16(b) (5). Assuming your representation agreement is clear that your client has an obligation to pay you, this rule allows you to withdraw under those circumstances. However, if you are venued in federal court, you will still need express permission from the court in order to withdraw.

It is important to note that this rule also requires the attorney to give their client notice about the potential of withdrawal. An attorney

cannot immediately withdraw from representation because the client is one day late on payment. Conversations and warnings about the consequences of not paying an invoice are necessary.

HOW CAN YOU COLLECT YOUR FEES?

Let's imagine you have withdrawn from representation, or your representation came to a natural conclusion. If you still have not received payment on your final invoice, what should you do? Perhaps more importantly, what you should *not* do?

If gentle reminders to your client are not working, do not take matters into your own hands. It might go without saying, but it is not advisable to show up at your client's house with a baseball bat or the script from *The Big Lebowski*.

Similarly, it is not advisable for you to represent yourself in a lawsuit to collect fees from your client. More often than not, these situations result in a counterclaim for malpractice. No lawyer wants to be stuck with unpaid fees, malpractice lawsuits, and a reputation for suing their clients.

The first step is to determine whether pursuing your unpaid fees

Letting an experienced collection law firm handle the issue may increase your chances of recovering fees, decrease your chances of having a malpractice suit filed against you (although this risk will still exist), and decrease your chances of losing sleep over the issue.

is worth the potential risks. Often, it is not. A decision to pursue fees should be run through your firm's management team. There should be a discussion about the value of the unpaid fees, the likelihood of collection, and a robust discussion about the underlying representation. Was there a positive outcome for the client? Were there any mistakes made that could expose you or the firm to malpractice? Should you give a discount on the fees? Are the time entries correct and does the client dispute any portion of the invoice? How many times have you contacted the client about the bill and have you tried to work out a payment plan?

If you still believe pursuing the unpaid bill is necessary, the better solution is to involve a reputable collection law firm to collect the unpaid fees. Collection law firms are experienced in resolving these disputes efficiently and effectively and they understand the many laws and regulations that may apply in the collection process. Letting an experienced

collection law firm handle the issue may increase your chances of recovering fees, decrease your chances of having a malpractice suit filed against you (although this risk will still exist), and decrease your chances of losing sleep over the issue. What lawyer doesn't want more sleep?

TIPS FOR AVOIDING NONPAYMENT

Sometimes there is nothing you can do to prevent a client from playing "dine and dash" with their attorneys' fees. However, there are actions you can take to try to lessen these chances.

Perhaps the greatest protection an attorney can create is requiring a retainer fee at the commencement of the representation. Retainer fees are generally placed in trust and used to pay fees as they are incurred. This will ensure your prospective client is willing and able to pay for the representation. A cautionary note: there are specific rules related to retainer fees and how they are handled, so at-

torneys should be sure to review the Rules of Professional Conduct to ensure their retainer fees and accompanying agreements are compliant.

Regardless of whether a retainer fee is used, invoices should never come as a surprise. Clients need to have an understanding of what they are paying for and how much it should cost, and it is your responsibility to ensure this. Billing rates should be explicitly listed in your representation agreement, as well as the scope of representation.

Accurate and detailed billing records are crucial as well. A client is much more likely to see the value in "communications with opposing counsel regarding potential for settlement," as opposed to "external discussions." Clients should not view their legal bill and wonder what exactly they are paying for.

CONCLUSION

It can be uncomfortable when a client does not pay their invoice. Sometimes this situation can be resolved with a gentle reminder to the client. Other times, it may be necessary to have an outside entity handle the issue for you. Regardless of what actions you take, it is important to maintain compliance with the Rules of Professional Conduct. While unpaid fees can create discomfort, nothing compares to the discomfort created by an ethics or malpractice complaint.

Kiralyn Locke is an attorney with Bassford Remele. Kira counsels lawyers and law firms on professional liability claims, including legal ethics, legal malpractice, and employment disputes related to legal professionals. In addition to her professional liability practice, Kira conducts employment investigations and represents her clients in employment litigation and trust and estate litigation. She can be reached at klocke@bassford.com. Jessica Klander is a shareholder with Bassford Remele, co-chairs its consumer law defense practice group, and is a member of the firm's board of directors. Jessica defends clients against liability and malpractice. She also advises law firms and other organizations on risk management and compliance. She can be reached at jklander@bassford.com.



JESSICA KLANDER



KIRALYN LOCKE