

A Reminder About Letters of Protection

by

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A letter of protection is the lawyer's written promise to a third party, such as a medical provider, to protect that party's interest. Letters of protection provide assurance to third parties (such as medical providers) that their interests will be protected in the event of the settlement of the client/patient's legal claim. This enables the client to continue receiving treatment that he or she might not be able to receive if the healthcare provider were to require immediate payment for continuing treatment. If lawyers were able to refuse to honor their pledges to healthcare providers whenever the client wanted, it would have a negative effect on the ability of clients to receive such treatment. Letters of protection do not come without extra duties and responsibilities of the lawyer.

Potential conflicts

Letters of protection are fairly common, especially for lawyers practicing in personal injury matters; however, agreeing to provide a letter of protection creates a conflict of interest for the lawyer.

Rule 1.7(a)(2), Minnesota Rules of Professional Conduct (MRPC), provides that a conflict of interest exists if there is a significant risk that the representation of a client may be materially limited by the lawyer's responsibilities to a third person. Rule 1.7(b), MRPC, permits a lawyer to go forward with a representation in which there is a conflict of interest where, in pertinent part: (1) the lawyer reasonably believes she or he can provide competent and diligent representation to the client despite the conflict; and (2) the client gives informed consent after consultation with that consent confirmed in writing.

Here, a letter of protection may materially limit the representation of the lawyer's client because of the new responsibilities to the third party, such as a medical provider. The lawyer is undertaking a contractual obligation to the medical provider that is adverse to the client. Upon receipt of funds on behalf of the client, the lawyer will be obligated to pay the medical provider, even if the client has changed his or her mind as to the wisdom of making the payment. It is foreseeable that a lawyer can reasonably believe that the representation will not be adversely affected by signing the letter of protection. The important requirement of Rule 1.7(b) is that the client consents after consultation.

The lawyer must consult with the client and explain what providing the letter of protection means. Specifically, a lawyer must explain that even if the client later changes his or her

mind about paying the third party later on, the lawyer will be required to pay the third party out of any funds that the lawyer receives on the client's behalf, even if that means that the client will not end up receiving any funds from his or her settlement. Providing the client with a copy of the proposed letter of protection will assist the client in understanding the obligations being taken on by the lawyer.

Once the client is fully informed as to the lawyer's obligations upon signing the letter of protection and still desires the lawyer to undertake those obligations, the client's consent to going forward in the face of the conflict of interest must be confirmed in writing.

Duty to pay the third party

It is important to note that once the lawyer signs the letter of protection the lawyer now has an ethical obligation to pay the third party. The letter of protection does not merely allow the lawyer to pay the third party, it is a requirement to pay the third party, even over the objections of a client. Failure to honor the letter of protection may result in discipline for the lawyer. The director's office has issued admonitions to lawyers who failed to pay the third parties when there was a letter of protection and noted that such conduct violates Rule 8.4(c), MRPC, prohibiting "misrepresentations," and Rule 8.4(d), prohibiting conduct that is "prejudicial to the administration of justice."

Letters of protection can be beneficial for clients so they can continue with treatment, but lawyers need to be aware of the requirements to adequately communicate with their client about the risks and potential conflict of interest. Lawyers also have a duty to honor letters of protection once they are executed.