

Can Lawyers Go On Strike?

Withdrawing Services Not Always An Option

by

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Adeline Attorney worked on the client's case for months. She has regularly billed the client, taking payment from the substantial retainer she placed in his trust account when she took the case. This last month's billing, however, takes the last of the retainer, with a small balance owing. Now what does she do?

Adeline wisely anticipated that at some point the client might be less than prompt in paying his bill. She included in her written retainer agreement, which was signed by the client, a clause that allows her to cease work on the client's matter in the event the billing is not paid "immediately." She also included interest to be paid on balances over 30 days old.

There is very little left for Adeline to do to complete work on the file. After months of negotiations, a stipulation has been reached and memorialized by exchange of letters between the attorneys. All that is needed is to draft the stipulation for the parties' signatures and filing with the court. Adeline is concerned, however, that if she completes the work, she will not be paid for the balance that is now owed, or for the additional work to be done. Can Adeline cease work on the file until the balance owed is paid?

Forbidden clause

An attorney is ethically forbidden from withholding services to coerce payment from a client. The clause in the retainer agreement which appears to allow the attorney to do just that is also not permitted. A number of state ethics opinions hold that an attorney may not ask the client to sign a retainer agreement giving the lawyer an unqualified right to withdraw from the representation in the event the client fails to compensate the lawyer.

Permissive withdrawal from the attorney-client relationship by the lawyer is also not an absolute right. While an attorney may withdraw for nonpayment of fees by the client, the lawyer may only do so by meeting the conditions set forth in Rule 1.16(b)(3), Minnesota Rules of Professional Conduct (MRPC). Withdrawal for financial reasons is allowed only 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," Rule 1.16(b)(3), MRPC. The opinions hold that a lawyer's attempt to obtain a greater right to unilaterally withdraw without meeting these conditions is unprofessional conduct.

Does Adeline Attorney have to complete the work for free? Upon the facts presented in this case, maybe.

The lawyer normally has the choice to complete the work, and bill the client, or to withdraw from representation upon reasonable notice to the client.

In the case of Adeline Attorney, she may not have the option to withdraw, because the client has not yet failed to pay, since the billing just went out, and the client should have a reasonable time to make the payment. Secondly, even if the client fails to pay the bill, if the balance owed is small, and the bulk of the bill has been paid out of a substantial retainer, there is not a failure to substantially fulfill the obligation. Adeline should complete the work by completing the stipulation, and bill the client for the additional work. To do otherwise would be to neglect a legal matter, a violation of Rule 1.3, MRPC.