

## **Don't Sue a Current Client for Fees**

**by**

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In most matters, lawyers want and expect to be paid for their services. When a lawyer is not paid, the lawyer often will want to take action to recover payment. The lawyer might write a letter, seek arbitration of the fee dispute or commence litigation. A professional responsibility issue arises, however, when the lawyer attempts to commence a lawsuit against a current client.

An example may illustrate the point. A husband retained a lawyer for representation in a marital dissolution proceeding. After nearly two years of representation, the unpaid bill was more than \$8,000, and the matter was not yet completed.

At that time, the client signed an addendum to the retainer agreement stating that the client acknowledged his unpaid debt to the lawyer and requesting the lawyer to continue to represent him further in the matter.

Four months later, the outstanding balance had grown to more than \$10,000. At that time, the lawyer requested the client to sign a confession of judgment for the unpaid debt. The client complied, in exchange for the lawyer's continued representation.

Three days later, and without notice to the client, the lawyer filed the confession of judgment. Judgment was entered against the client in an amount greater than \$10,500.

While this was going on, the representation continued. A month after the lawyer filed the confession of judgment, the lawyer represented the client at the trial in the marital dissolution proceeding. Two weeks after that, again without notice to the client, the lawyer attempted to levy against the client's bank account to attempt to collect on the judgment. The lawyer continued to work on the client's case for approximately another month, at which time the client retained a different lawyer for the dissolution proceeding.

The lawyer's conduct violated Rule 1.7(a) of the Minnesota Rules of Professional Conduct. The lawyer and the client continued to have an attorney-client relationship while the lawyer undertook legal action against the client. The lawyer did not inform the client before the lawyer entered judgment against the client or before the lawyer attempted to levy against the client's bank accounts. The client did not

consent to these actions that were directly adverse to him.

The lawyer might argue that by having the client sign an addendum to the retainer agreement and a confession of judgment, sufficient notice was provided to the client of the lawyer's intentions to pursue a legal action against the client. Such actions may, however, instead cause the client to believe that by signing such documents and acknowledging the client's debt to the lawyer, the client was securing the lawyer's continued representation and loyalty without the prospect of immediate legal action by the lawyer to collect the unpaid fees.

The Supreme Court has found such action improper and disciplined a lawyer for this type of misconduct. *In re Szymialis*, 557 N.W.2d 554, 556 (Minn. 1997) ("Filing a conciliation court action against a current client violated Minn. R. Prof. Conduct 1.7").

If a lawyer wishes to sue a current client for fees, the lawyer must either withdraw from the representation (if permitted by the rules of professional conduct) or wait until the lawyer's duties in the matter are complete.

Lawyers may take action, including assertive action, to collect their fees. They may not, however, sue a client they currently represent.