

Letters of Protection: Keeping Your Client's Promise

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When settling a case does the lawyer have an ethical obligation to ensure that third parties are paid for services provided to the client? For example, a chiropractor is treating the client for injuries sustained in an automobile accident. The client's no-fault insurer is denying coverage for the treatment and the chiropractor is not being paid. The chiropractor is aware that the client has hired a lawyer to pursue the matter and based upon the client/patient's promise that the bill will be paid as part of any settlement, the chiropractor agrees to continue treatment. At the request of the lawyer the chiropractor may even agree to reduce her bill to facilitate settlement. However, when the case settles the client asks the lawyer to turn over all of the proceeds to him, informing the lawyer that he will "take care" of the chiropractor's bill. Whether the lawyer must surrender the funds to the client, or whether the lawyer must pay the chiropractor despite the client's protestations, will depend upon whether the lawyer provided the chiropractor with a "letter of protection."

Generally, the lawyer has an ethical obligation to comply with the client's directives. Therefore, even knowing of an outstanding bill for medical services and knowing of the client's promise to pay that bill, the lawyer must honor the client's request and release the funds to the client. The lawyer may (and should) tell the client of the client's moral and legal obligation to pay the chiropractor. The lawyer may remind the client that the chiropractor reduced her fee in order to facilitate settlement. The lawyer may even tell the client that the lawyer will be very mad if the client doesn't pay the chiropractor. However, the lawyer may not act contrary to the client's wishes and release the funds to the chiropractor; that is, unless the lawyer has provided the chiropractor with a letter of protection.

A letter of protection is the lawyer's written promise to a third party, such as the chiropractor, to protect that party's interest. If the lawyer has provided the third party with a letter of protection the lawyer may pay that party over the client's objections. However, agreeing to provide a letter of protection creates a potential conflict of interest.

Rule 1.7(b), Minnesota Rules of Professional Conduct (MRPC), provides that a lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to a third person unless: (1) the lawyer reasonably believes the representation will not be adversely affected; and (2) the client consents after consultation. Therefore, before providing such a letter the lawyer must obtain a waiver of that potential conflict.

First, the lawyer could reasonably conclude that the representation of the client would not be adversely affected by the letter of protection. Presumably the client wants the third party to be paid. It is likely in the client's best interest to continue receiving treatment. The healthcare provider may not agree to continue the treatment absent a promise that he or she will be paid. Therefore, the lawyer could reasonably believe that the representation would not be adversely affected.

Second, the lawyer must consult with the client and explain what providing the letter of protection means. Specifically, even if the client later changes his or her mind, the lawyer will pay the third party. The lawyer should also provide the client with a copy of the letter of protection so that the client is clear on what is being agreed to. Moreover, although not specifically required by the Minnesota Rules of Professional Conduct, a prudent lawyer may also wish to have the client sign off on the letter of protection. This provides evidence of the client's consent should that subsequently become an issue.

Finally, not only does the letter of protection permit the lawyer to pay the third party, the lawyer now has an ethical obligation to do so. 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 honor letters of protection.[Ftn 1](#)

Again, the letters serve a useful function in permitting clients to continue to receive benefits while a matter is pending. If attorneys do not honor their letters of protection, the administration of justice is adversely affected because healthcare providers and other third parties will be less likely to forgo payment while the client's case proceeds. Rule 8.4(d), MRPC, makes it unprofessional conduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

A lawyer's primary responsibility is to the client. Notwithstanding the lawyer's concern about whether the client will actually satisfy a debt to third parties, the lawyer cannot unilaterally withhold a portion of the client's settlement to pay those debts. The exception to this situation is where the lawyer has signed a letter of protection promising to pay the third party creditors. Before issuing such a letter the lawyer must explain the potential conflict to the client and obtain the client's consent. However, once the lawyer has issued the letter of protection, the lawyer has an ethical obligation to honor the letter of protection.

¹ See March 1987 *Bench & Bar* article "Summary of Admonitions."