

## **A Lawyer's duty to protect the property of clients**

**by**

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Reprinted from *Minnesota Lawyer* (February 22, 1999)

As lawyers we are keepers of client confidences and secrets. Lawyers are well aware of their duty to hold in trust client confidences and to keep inviolate client secrets. Lawyers are also, as a general rule, well aware of their responsibilities to handle client funds in a fiduciary capacity.

Lawyers sometimes forget, however, that they have the same fiduciary duty to clients to keep safe the "things" that we receive from and on behalf of clients. The failure to properly maintain those items and to return them to their rightful owners, the clients, can result in lawyer discipline. The cases discussed below are based on actual admonitions issued by the director in the past year.

Client I. M. Hurt retained lawyer D. Troy DeRecords to represent him in a claim arising out of a work injury after Hurt's employer's workers' compensation insurer denied payment of Hurt's claims.

Between August 1997, when Hurt retained him, and January 1998, attorney DeRecords gathered the necessary medical and employment records on behalf of Hurt. Once the information had been collected, DeRecords negotiated a settlement of Hurt's claims. Hurt's claim for medical benefits remained open.

On February 12, 1998, the parties signed a Stipulation for Settlement. The Award on Stipulation was filed on February 23, 1998, and DeRecords closed his file in March 1998.

Later in the summer of 1998, Hurt began having difficulty obtaining payment for some of his medical claims. Hurt contacted his former lawyer DeRecords and asked for copies of some of the medical reports from his file. Attorney DeRecords, however, was unable to provide Hurt with the documents because in a move to save storage space he had destroyed them as soon as the representation had ended.

Hurt filed a complaint with the director's office, which issued an admonition to DeRecords for a violation of Rule 1.15(b)(4), Minnesota Rules of Professional Conduct (MRPC), requiring lawyers to promptly deliver to the client when requested "funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive."

In the second case, client Sue Themm approached the respondent lawyer about a possible lawsuit against an agency of the federal government. Themm provided the lawyer with a number of documents concerning her claim, as well as a videotape and a book.

After several months of investigation, the lawyer decided that he was not interested in the representation and he wrote to Themm informing her of that fact. Themm and the lawyer then made arrangements for the return of Themm's property. When she received the material back from the lawyer, however, the videotape and the book were missing. The respondent lawyer later informed Themm that he had lost them.

Although the lawyer was eventually able to locate the tape and the book (a year and a half after the other

materials had been returned and after Themm filed her complaint with the director's office), the lawyer received an admonition for violating Rule 1.15(b), MRPC.

Failure to return client property has also, in part, been the basis for public discipline of lawyers. *In re Grzybek*, 567 N.W.2d 259 (Minn. 1997). In that case the lawyer failed, despite numerous requests, to return files and items contained in the files to several clients. The Minnesota Supreme Court noted that the lawyer's failure to return the client's property was serious first because of a continued pattern of misconduct and second because the lawyer's "failures have caused substantial inconvenience and unnecessary frustration to his clients." *Id.* at 263.

Lawyers should remember that their duty to their clients includes a duty of safekeeping client property. This duty does not mean that a lawyer has an obligation to act as a warehouse for client property.

In an informal ethics opinion, the ABA has recognized that substantial storage costs can affect the costs of legal services, and that the public interest is not served by unnecessary and avoidable additions to the cost of legal services by unnecessary storage. This does not, however, give lawyers the right to unilaterally destroy or fail to take adequate steps to protect client property. The opinion goes on to note that "clients and former clients reasonably expect from their lawyers that valuable and useful information in the lawyers' files, and not otherwise readily available to the clients, will not be prematurely and carelessly destroyed, to the clients' detriment." ABA Informal Opinion 1384. The opinion also indicates that unless the client consents, a lawyer "should not destroy or discard items that clearly or probably belong to the client."

The client's property deserves the same consideration as the client's secrets.