

Don't Withhold Client Files

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This is a summary of a recently issued admonition. The client retained the lawyer to represent her in a wrongful death action. The client and the lawyer entered into a contingency fee retainer agreement which stated that the lawyer's out-of-pocket expenses would be reimbursed from the client's portion of any recovery. The retainer agreement did not state whether the client would be responsible for expenses if there were no recovery.

Shortly before trial, the lawyer requested the client to pay approximately \$5,000 toward out-of-pocket expenses. The client declined and requested the lawyer to return the file to her. The lawyer refused to return the file until the client paid approximately \$350 in copying fees. The client declined to do so. The lawyer followed up the meeting with a letter in which he stated that the retainer agreement "calls for your payment of the costs involved in the trying of the lawsuit, and that it is mandatory that we have this money."

Three violations

The admonition identified three violations. First, the lawyer's failure to return the client's file until she paid the cost of copying the file violated Lawyers Professional Responsibility Board (LPRB) Opinion Nos. 11 and 13.

LPRB Opinion No. 11 prohibits attorneys from retaining liens on the files and papers of a client. LPRB Opinion No. 13 prohibits a lawyer from conditioning the return of files, papers and property on the payment of copying costs absent a prior written agreement.

Second, the failure to clarify whether the client would be liable to reimburse the lawyer for out-of-pocket expenses if there were no recovery in the case violated Rule 1.5(b), Minnesota Rules of Professional Conduct (MRPC). This Rule requires an attorney to clarify the basis and rate of his fee, preferably in writing, at the outset of the representation.

Third, the lawyer's request that the client pay for expenses during the matter violated the terms of his own retainer agreement. One reasonable interpretation of the retainer agreement is that only after a recovery would the client be responsible for reimbursement of expenses. The lawyer's request that the client reimburse during the case violated Rule 1.4(b), MRPC.

An admonition is a private form of discipline, issued for isolated and non-serious misconduct. Rule 8(d)(2), Rules on Lawyers Professional Responsibility. It is the least severe form of discipline. The director issued an admonition because the lawyer's misconduct appeared to be confined to a single matter and there was not

clear evidence that the lawyer's misconduct substantially harmed the client.

Lessons

The lessons to be learned from this admonition are:

1. Do not charge a client for copying the file upon termination of the representation.
2. Do not withhold the file until any copying charge, even if agreed upon, has been paid.
3. Do clarify fully the nature and extent of the client's liability for out-of-pocket expenses in all possible scenarios.
4. Do honor your retainer agreements.