Legal Ethics Of Conducting Business With Your Client

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Larry Lawyer and Clifford Client were friends, and Lawyer represented Client in several business transactions over the years. In addition to the practice of law, Lawyer owned several pieces of business property as investments, primarily properties which needed some improvements to realize a good return.

Client retained Lawyer to represent Client in a lawsuit to collect a debt.

The fee arrangement agreed to between Client and Lawyer was that Client would pay all out-of-pocket expenses and Lawyer would be entitled to one-third of any amount actually recovered. Client paid the filing fee and other incidentals as they arose.

Judgment was finally entered against three defendants, two of whom filed for bankruptcy and discharged the debt.

Client then learned of a piece of real estate owned by the third defendant, against which collection could be made.

Lawyer agreed to pursue collection, but upon new terms. Lawyer and Client would be equal partners in a business venture. No written agreement to this effect was, however, signed.

The property was subject to a prior judgment lien, so Lawyer filed the judgment in the county, along with an assignment of judgment given him by Client, then collected rents for a year, biding time until the partnership could redeem. After a year, Lawyer suggested to Client that they redeem the property, make necessary improvements, and share any profits.

Client declined to put any money into the redemption, believing the property would not turn a profit, and told Lawyer that he wanted nothing further to do with the property. Lawyer advised Client that Lawyer wanted to go forward with redemption himself, and Client said fine, so long as Client didn't have anything further to do with it.

Lawyer paid over to Client one-half of the rents collected, and retained the other half. Lawyer then used his own funds to redeem the property, make improvements, pay back taxes and make the property saleable. Lawyer used the assignment of judgment to put the property into his own name.

There were no written agreements between Lawyer and Client as to how Lawyer would be paid for his services, or memorializing the partnership relationship between them. There was no written document evidencing a termination of the partnership, because Lawyer said at that point the relationship had deteriorated to a point that Client wouldn't have signed anything.

This scenario implicates several Rules of Professional Conduct (MRPC). First of all, a contingent fee must be in writing, Rule 1.5(c), MRPC, and in this case there was no written contingent fee agreement. Because the attorney never collected on the contingent fee agreement, however, no discipline was imposed for this misconduct.

Secondly, a business transaction with a client must be in writing, and must be on terms that are fair and reasonable to the client. Rule 1.8(a), MRPC. Preferably, the client should have the opportunity to have independent counsel review the transaction.

In this case, the partnership arrangement with Client, as well as the termination of the partnership, should have been in writing, signed by the client. They were not. Apparently there were third-party witnesses at the meetings between Lawyer and Client at which the transactions were discussed, and there was no question that Client agreed to the transactions. A writing would, however, have been a preferable form of proof of consent, and also would have reminded Client of the terms of the agreement.

Although the terms of each transaction were orally disclosed and appeared to be fair and reasonable, the transactions were not in writing and were not signed by Client. Because the attorney had no prior discipline over an extensive career and the attorney did not take advantage of the client in these transactions, the lawyer was admonished for this violation of Rule 1.8(a), MRPC.