

PRACTICE TIPS FROM BAR COUNSEL

CLIENT FILES AND ATTORNEY LIENS – IT MIGHT BE THE CLIENT’S FILE, BUT IT CAN BE YOUR LEVERAGE

BY PHIL PATTEE, ASSISTANT BAR COUNSEL, STATE BAR OF NEVADA

“What difference does it make how much you have? What you do not have amounts to much more.”¹

“Possession isn’t nine-tenths of the law. It’s nine-tenths of the problem.”²

All good things must come to an end,³ and the same goes for bad stuff. Loss of a pain-in-the-neck client qualifies as the latter.

But when termination of the attorney-client relationship involves a particularly bad client, it might seem like a bad divorce that just won’t end. Actually, parallels with a divorce scenario are striking, right down to the question of who gets what.

Part and parcel of most attorney-client separations is the question of who keeps the file. The client – who, after all, is the client – believes that he or she should get the file. That’s not an unreasonable opinion, especially if the legal matter remains pending and the client is looking for a new lawyer.

Of course, the attorney believes that ethics rules require him/her to keep files for seven years⁴ and, therefore, he/she *must* keep the file. The attorney is, of course, always willing to provide the client a copy of the file, so long as the client pays the copying charges.

Guidance for the who-gets-the-file problem is provided by ethics rules, statutes, Nevada Supreme Court decisions and ABA ethics opinions underlying the Model Rules of Professional Conduct. The result is a good news/bad news scenario for lawyers.

First, NRS 7.055 states that when discharged by a client, an attorney shall, “upon demand and payment of the fee due from the client, immediately deliver to the client all papers, documents, pleadings and items of personal property which belong to or were prepared for that client.”⁵

The statute then details possible remedies for the client who, “after demand therefore and payment of the fee due from him,” does not receive materials from the attorney.⁶

Good news for Nevada attorneys comes from language in NRS 7.055 which clearly requires payment of fees *before* an attorney must surrender the client file. Furthermore,

Nevada case law regarding various types of attorney liens⁷ generally supports the proposition that a lawyer can retain a client file if terminated with fees still outstanding.

And although Rule of Professional Conduct 1.16 (Declining or Terminating Representation) requires attorneys to surrender “papers and property to which the client is entitled” when representation ends, this ethics rule also acknowledges that the lawyer may retain materials “to the extent permitted by other law.”⁸

So, does that really mean what it sounds like? Yes, if fired by the client who’s stiffed you for fees, you can hold the file hostage. You probably also can retain any property belonging to the client that has come into your possession through the representation.

A short while back, a divorce attorney in Las Vegas had been fighting hard to wrench his client’s beloved baseball card collection from the wife. Then, literally hours after the attorney received the collection from the wife’s counsel, he was fired by the husband.

The client screamed pretty loudly to the District Court and Office of Bar Counsel when the attorney refused to release the file because legal fees remained outstanding. The screaming got louder when the husband realized that his baseball card collection also wasn’t coming home.

The screaming became deafening when the husband learned that no ethics rule had been violated. The attorney’s fee was paid a short time later.

Now for the flip side. The file belongs to the client. When the representation ends and the client has no outstanding balance, the attorney must turn over the client file. The relevant statute, NRS 7.055, says it must be done “immediately.” Ethics rules, which come from the Nevada Supreme Court, generally state that such things should be done “promptly.”

Accordingly, it’s a good idea to release client files as soon as reasonably possible. Emphasis on soon.

Finally, if the client wants his/her file, and the attorney needs to keep copies of relevant documents, the lawyer must assume the associated costs absent an express agreement



with the client prior to termination of representation.⁹

Fights over client files are common. If you're not entitled to it, be sure to release the file quickly and, if necessary, pay for any required copies.

But if the client still owed legal fees when he/she terminated the representation, you probably can hold on tight. That client file might be the last bit of leverage which allows you to finally get paid. **NL**

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- 1 Seneca the Younger, Roman philosopher and humorist (4 BC-65 AD).
 - 2 John Lennon, famous musician/singer (1940-1980).
 - 3 English proverb, circa 1375.
 - 4 Rule of Professional Conduct 1.15 (Safekeeping Property).
 - 5 NRS 7.055(1).
 - 6 NRS 7.055(2).
 - 7 *Morse v. District Court*, 195 P.2d 199 (1948), *Matter of Kaufman*, 567 P.2d 957 (1977), and *Figliuzzi v. District Court*, 890 P.2d 798 (1995).
 - 8 RPC 1.16(d).
 - 9 See comment annotations, Rule 1.16, *Annotated Model Rules of Professional Conduct* (6th ed. 2007).
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