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Practice Tips

Glenn Machado, Assistant Bar Counsel

MY CLIENT DOESN’T WANT ME TO PAY THE DOCTOR – CAN I REFUSE?

The distribution of litigation proceeds is a frequent subject of ethics calls to our office. The problem often arises when the settlement funds received are insufficient to pay off all of the client’s medical bills, or when the chiropractor’s bill seems a tad too high and the client refuses to sign off on the payment, or when the client simply directs the attorney to release all the funds directly to him or her. (“I’ll negotiate the bills myself,” is what they always seem to say.) What to do?

You may not be surprised to read that the distribution of litigation proceeds, or lack thereof, is also one of the most frequent causes of bar complaints.

In short, here’s what not to do: don’t unilaterally reduce everyone’s bills, even if you’re reducing your attorney’s fees by the same amount. And don’t simply turn over the funds to the clients.

Why? Because, if the client has assigned any portion of the litigation proceeds to a third party, it’s no longer the client’s money, even if the third party is a loan provider charging a ridiculous interest rate.

Interestingly, the Nevada Supreme Court decision that addresses an attorney’s obligation to these third parties isn’t a disciplinary case. Nor does the case specifically reference the applicable rule, RPC 1.15 (Safekeeping Property).

The case is Achrem v. Expressway Plaza Limited Partnership.¹ The underlying case concerned a minor whose baseball coach hit him in the head with a bat while at school. The plaintiff Shawn, who was 18, and his mother Marcia subsequently signed an assignment allocating approximately $16,800 of the recovery to pay off past-due lease and maintenance charges Marcia had incurred. So far, so good.

The landlord’s counsel then sent Shawn a copy of the signed assignment. As a result, the plaintiff’s attorney had notice of the assignment.

Once the $45,000 settlement was received, Shawn directed his attorney to distribute those funds directly to him. The attorney did so, and would later claim that the professional conduct rules required him to abide by his client’s wishes.

The attorney was subsequently sued in his individual capacity by the landlord for violating the laws of contract by ignoring the assignment. The district court agreed and granted the landlord summary judgment against the attorney.

The Nevada Supreme Court affirmed the district court’s decision. In doing so, the Nevada Supreme Court stated:

First, when a client assigns rights to the proceeds of a tort action to a creditor, those proceeds no longer belong to the client...

Accordingly, an attorney is not obligated to pay those funds to his client. Further, we conclude that if a conflict existed between Shawn’s interests and Expressway’s interests, Achrem should have deposited the settlement proceeds in a trust fund account and requested a court to direct the fund’s distribution. See NRCP 22.

Nevada Rule of Civil Procedure 22 concerns interpleading money. So, if the client and third party can’t come to an agreement as to how much should be paid, the proper procedure is to interplead the funds and let a court decide who gets what.

Both RPC 1.15 and its predecessor, SCR 165, state that “[w]hen in the course of representation a lawyer is in possession of funds or other property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or other property as to which the interests are not in dispute.”
So, if there is a dispute as to how much is owed, the money should sit in your trust account until the dispute is resolved. If it can’t be resolved, you should interplead the funds.

RPC 1.15 and the Achrem decision do not apply to claims asserted by an unsecured creditor. However, as was the case in Achrem, assignments of interest are not limited to statutory or common law liens. For example, medical liens in Nevada typically are not statutory liens (with one exception being hospital liens under NRS 108.590), nor are they found in common law. As such, medical providers obtain protection for their claims through an assignment of the proceeds of the tort settlement, and these assignments are typically referred to as “liens.”

One final point: although the Achrem case specifically concerned third parties, an attorney may not unilaterally withdraw his or her fees from a settlement unless the client consents to the amount. RPC 1.15 specifically says this. What happens if the client refuses to consent to disbursement? If attorney’s fees are involved, either the attorney or client can seek a fee dispute arbitration through the state bar. The attorney may also seek to obtain a judgment from the appropriate court.

So, if your client doesn’t want to pay the doctor, you might just have to refuse. Otherwise, you might end up paying the doctor out of your own pocket.

1. 112 Nev. 737, 917 P.2d 447