



Law Practice With the Slow-Pay Client

There is not a lawyer alive who has not had occasional difficulties getting a client to pay. But what are your responsibilities to a non-paying client while you await the check that you hope is—but suspect is not—in the mail?

Assume the retainer has run out after you have filed suit, done your disclosures and started discovery. Your client says it will be a while before he can pay you.

What do you do? Can you suspend work until the client catches up on his payments?

Several recent ethics opinions from Rhode Island and Missouri indicate that there are ethical problems involved if a lawyer suspends work on a case until the client resumes payment. Although there is a real temptation to put the nonpaying or slow-paying client's work on the back burner (we've all done it), a lawyer can rule afoul of Arizona's Rules of Professional Conduct¹ by doing so.

ER 1.3 provides that every lawyer has a duty to represent the client diligently. Unless and until the relationship is terminated, the lawyer must carry through to conclusion all matters undertaken. If the client breaches an agreement to pay the lawyer, the ethical rules provide that the lawyer must continue to work diligently on the client's case or withdraw pursuant to ER 1.16. There does not appear to be a middle ethical ground.

This issue arose in two separate inquiries concerning whether a lawyer could ethically include a provision in a retainer agreement that would allow the lawyer to cease working on the client's behalf, without withdrawing from the representation, in the event that the client did not pay as agreed.

The responses to these inquiries were unanimous: The lawyer cannot do so.² The responses cited ER 1.3 and the corresponding provision in ER 1.16 allowing a lawyer to withdraw if the client "fails substantially to fulfill an obligation to the lawyer; e.g., pay his bill." And a recent ethics opinion from Alaska held that a lawyer may not withhold an expert or investigator's report that the client has not paid for, especially if the client would be prejudiced as a result.³ The Alaska opinion



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cites ER 1.4 (a lawyer shall keep a client reasonably informed) and the ethical obligations to

return papers and property at the termination of representation to which the client is entitled. See ER 1.16(d).

If you opt to terminate the representation, do not forget that ER 1.16(a)(5) requires that withdrawal for nonpayment of fees must be done only after "reasonable warning" to the client that the lawyer will withdraw unless payment is received. This would normally mean that you would continue representation until you have formally withdrawn from representation. If a new lawyer is retained by the client, ER 1.16(d) requires that you cooperate with that lawyer to bring him or her up to speed. **AZ AT**

endnotes

1. Rule 42, ARIZ.R.S.Ct.
2. Opinion 200308, Rhode Island Supreme Court Ethics Advisory Panel (Dec. 4, 2003); Informal Advisory Opinion 2000172, Missouri Bar (2000).
3. Ethics Opinion No. 20041, Alaska Bar Association (Jan. 15, 2004).



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Ethics
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