

Dealing with Parties Related to Your Client

Strategies and Instruction on How to Keep Your Client Free of Third-Party Issues

Frequently, a prospective client, particularly in a family law case, will come to your initial interview with a third party - a parent, friend, employer, fiancée, or even current spouse. The other person is brought along for moral support or to provide additional facts, but sometimes because that person will be paying the fees.

What can you and your client discuss in the presence of that person? What should you do about accepting the fee from that person, or answering their questions thereafter, or taking instruction from them during the pendency of the matter?

The Rules of Professional Conduct give guidance as to some of these issues. Start with R. 1.6, Confidentiality (and keep in mind also lawyer-client privilege as an evidentiary concept). At the outset, when a third party is present the client should be told that their presence destroys confidentiality between the lawyer and client, making any communication between them possibly admissible in a later proceeding. Only with this “informed consent” can the client decide whether to ask the third party to remain in the lawyer’s waiting room, and perhaps join the meeting at its conclusion.

In addition, it may turn out that the client will be more comfortable relating facts, wishes and strategy without that person present. Hence, it may be helpful to give the client that excuse for keeping the third party out for all or most of the meeting.

If the third party will be paying the retainer, and/or any other fees and costs in the future, R. 1.8(f) becomes applicable. It provides that a lawyer may not accept compensation for representing a client from someone other than the client without the client’s informed consent, and no interference with the lawyer’s



independence of professional judgment.

In addition, R. 5.4(c) says that a lawyer shall not permit a person who pays the lawyer to perform legal services for another to regulate the lawyer’s professional judgment in rendering those services.

Most commentators suggest that the lawyer ask the client to make the payment to the lawyer from the client’s account, getting the funds directly from the third party if necessary. Further, the client should be told that the lawyer reserves the right to take direction from and communicate solely with the client, and not the third party.

If the client asks for bills to be sent to the third party, you can either agree to send copies of the bills (addressed to the client) to that third party, or suggest that the client do so (maybe sending the client two copies). The client should also be told that the details of the billings will result in disclosing to the third party all activities performed by the lawyer, including perhaps a summary of the substance of conferences and telephone

calls, hence impacting confidentiality.

Finally, when the client asks that the third party be kept “in the loop,” it usually means the lawyer is authorized to communicate with the third party, answering their questions and discussing strategy. This authorization should be confirmed with the client, either in the fee agreement or some written communication thereafter. Further, as set forth above, the lawyer should make it clear to the client that, especially in the case of a conflict in directions, the lawyer will take instruction from the client only, and possibly cease communication with the third party at the lawyer’s option.

Help to a client from a third party is great, but care should be taken to comply with the Rules and protect both the lawyer and client. ■

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