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ETHICS HOTLINER

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Crossing the Bridge Before We Get There: Addressing Termination and Withdrawal Issues with Clients

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"I'll cross that bridge when I get there." Some attorneys take this approach in addressing termination of employment issues with their clients. It is, unfortunately, a short-sighted approach that can lead to harsh results for both attorney and client, including severe prejudice to the client's case or matter, attorney-client suits and client complaints into the State Bar.

Numerous attorney-client issues and disputes can develop at the time of an attorney's termination or withdrawal. Common termination/withdrawal issues raised by attorneys calling the State Bar's Ethics Hotline include: mandatory and permissive reasons for withdrawal; accounting for fees and costs; refund of unearned attorney fees; disposition of trust funds and client files; ongoing responsibilities for client matters; and professional liability.

Attorneys should visualize a "bridge" that must be crossed when an attorney's representation ceases. This bridge represents the transition period between active representation and the end of representation on the client's particular matter; it represents the winding-down of the attorney-client relationship. To cross the bridge successfully, an attorney must meet professional obligations owed to the client and must address and resolve any outstanding termination issues or disputes with the client.

An attorney's best approach to crossing the end-of-representation bridge is to build it with the client over the course of representation. This allows both attorney and client an opportunity to anticipate, address and resolve termination issues, and helps both achieve more realistic, mutual expectations regarding when and how their relationship will end.

Ideally, termination issues should be addressed with the client at the inception of the attorney-client relationship. A few attorneys find such up-front discussion difficult and potentially detrimental to their relationship with the client. However, most attorneys find it far easier to discuss and resolve termination issues up-front, when their attorney-client relationship is amicable, then after an issue or dispute has arisen and their relationship is strained.

Termination issues can be raised tactfully, with the client understanding that initial discussion of termination issues is common practice and will help facilitate a successful attorney-client relationship. Following discussion, attorneys should try to reduce all joint understandings to a signed writing. This writing can be used later to remind the client what was agreed-upon, and provides a roadmap for termination of employment that protects both the attorney and client.

Here are some termination issues, by no means exhaustive, that attorneys might consider addressing with their clients.

1. When will the representation end - what is the natural conclusion of the representation?

2. What specific responsibilities does the client have to the representation, such as payment of fees or production of discovery documents, and what are the ramifications for failure to meet those obligations?

3. What are the mandatory and permissive reasons for an attorney's withdrawal from representation? What duties are required of an attorney upon termination of employment? (See California Rule of Professional Conduct 3-700.)

4. How will the client file be handled? Who will be responsible for copying costs?

5. How will judgment or settlement funds be handled? How will remaining client trust account funds be handled?

6. How will the final billing for fees and/or costs be handled?

7. If substituted out, will the attorney place a lien on the client's subsequent recovery?

8. Who is responsible for paying third party liens or outstanding court sanctions?

9. How will the client's confidential information be preserved?

10. Where the case is appealed or the client seeks successor counsel, will the client be required to pay extra fees for extraordinary services that the attorney provides in assisting appellate or successor counsel?

11. Will fee disputes or malpractice claims be resolved through to arbitration?

By visualizing an end-of-representation "bridge," attorneys can perform better for their clients and better protect themselves. By building the bridge block-by-block, issue-by-issue with a client over the course of representation, most attorneys will find that termination of employment becomes an easier, more manageable exercise, and that crossing the bridge with their clients is considerably more pleasant. Even if you can't actually cross the bridge until you "get there," try visualizing the bridge and the exercise of crossing it before you get there. Both you and your clients will benefit.

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