

Disciplinary Note

A therapist complained that her patient's attorney had represented to her that the bill for her services to the patient would be paid out of any monies awarded to his client (the patient) in a personal injury suit he was pursuing on the woman's behalf. She had learned that the case had settled, yet she was never paid. Upon contacting the attorney, she was advised to seek payment directly from the client/patient. This avenue of collection had proven fruitless, and she was requesting that the Disciplinary Board collect the money she was owed from the attorney.

Initially, it should be pointed out that the Disciplinary Board is not a collection agency and that attorneys will not be disciplined on the basis that they cannot meet their financial obligations. See *Matter of Nails*, 105 N.M. 89, 91 (1986). It should also be noted that an attorney is not responsible for (and is even prohibited from) paying a client's debts. See SCRA 1986, Rule 16-108(E).

In this instance, however, there was documentary evidence indicating that the attorney had represented to the therapist that the client had authorized payment to her out of any settlement proceeds, that the therapist had ceased billing the client because of this representation, and that the case had settled in an amount sufficient to pay the therapist's bill (as well as all other outstanding debts incurred by the client with relation to her injury).

The attorney's position was that although he had received the funds and had fully intended to pay the therapist's bill, the client had indicated that she felt the bill was unreasonable and so would pay it herself after negotiating with the therapist about the amount of the bill. In that he had not originally obtained a written authorization from the client memorializing her decision to pay the therapist out of the settlement proceeds, he felt that he had no op-

tion but to give his client the money she requested. Unfortunately, the client took the money and was seen no more by either the therapist or the attorney.

It is apparently fairly common for attorneys to assist their clients with obtaining treatment and/or deferring payment of medical bills during the pendency of litigation by assuring the health care provider that payment will be made at the time of settlement. There is nothing unethical about this, so long as the client understands and agrees to the arrangement and so long as it is honored (insofar as possible) once a judgment or settlement has been obtained. (Obviously, if the case is lost or if the award is inadequate to cover all of the client's deferred debts, the client—and not the attorney—is responsible for paying the creditors.)

When, however, there is an agreement to pay the client's medical (or other) bills out of settlement proceeds and the proceeds are sufficient to meet the designated debts, the attorney is obligated to see that these debts are paid. He has a fiduciary responsibility to any debtors of the client to whom he has represented that payment will be forthcoming. See SCRA 1986, Rule 16-115(B) and *Johnstone v. State Bar*, 49 Cal. Rptr.

79, 410 P.2d 617 (1966) (attorney suspended from practice for three months for converting to his own use monies intended for third party on theory that attorney had fiduciary obligation to the third party).

If the client subsequently disputes the obligation to the third party or the amount of the obligation, the attorney must continue to hold the money in trust until the dispute has been resolved. See SCRA 1986, Rule 16-115(C). (While this rule applies to attorney-client disputes, the same procedure would be appropriate.) The cautious attorney will always obtain written authorization from the client to pay any of the client's bills out of settlement proceeds so that if the client should have a change of heart (as sometimes happens) the attorney can document the client's original agreement to pay the bill(s) in question.

In the case which is the subject of this Note, a reviewing officer felt the attorney had acted negligently in giving the money to the client after its having been assigned to the therapist. The attorney was offered an informal admonition for his violation of Rule 16-115(B) on condition that he pay the therapist the monies he should have withheld for her from the settlement. The offer was accepted.

Lawyers HOTLINE!

24 hours, 7 days a week

*Confidential help from fellow professionals
is a phone call away*

Chemical Abuse Knows

No Barriers . . .

(including the Bar!)

Call for Help

(505) 836-7980