

Joint Elder Law & Estate Planning/Probate Law Section Meeting

Tuesday, December 10, 2013 / 12 noon

Legal Ethics in Probate Proceedings: The Practice of Firing Clients. When is it time to fire a client and how should you do it? Join in for a roundtable discussion with Bar Counsel Steve Van Goor on the topic of when and how to fire a client and terminate the attorney/client relationship. Applicable rules will be reviewed and the practical and ethical concerns involved in firing a client, and the lawyer's common pitfalls will be discussed. *1 Ethics Credit.*

Handouts:

Alaska Rules of Professional Conduct

- RPC 1.1 Competence
- RPC 1.2 Scope of Representation
- RPC 1.3 Diligence
- RPC 1.4 Communication
- RPC 1.6 Confidentiality of Information
- RPC 1.8 Conflict of Interest: Current Clients: Specific Rules
- RPC 1.14 Client with Impaired Capacity
- RPC 1.15 Safekeeping Property
- RPC 1.16 Declining or Terminating Representation
- RPC 4.2 Communicating With Persons Represented By Counsel
- RPC 4.4 Respect for Rights of Third Persons

Alaska Bar Association Ethics Opinions

- 90-3 Disposition of Funds Held by a Lawyer For a Client Who Cannot Be Located
- 91-2 Responsibilities of Attorney Representing Personal Representative of Estate When a Conflict Exists Between the Personal Representative and the Heirs of the Estate
- 95-6 Attorney's Right to Withhold a Client's File Unless the Client Pays for Copying Files
- 2003-3 Documents to be Included in File Returned to Client on Termination of Services
- 2004-1 Lawyer's Right to Withhold Expert Reports Where the Client Fails to Pay for Them
- 2004-3 Responsibilities of an Attorney When a Client Cannot be Contacted
- 2011-1 Must a Lawyer Provide the Original File to a Former Client on Request, Rather Than a Copy?
- 2011-4 Duties of an Attorney in a Criminal Appeal When the Client Cannot be Contacted

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Withdrawal Essentials – A review of the cardinal principles and categories of RPC 1.16.

Applying the Rule – A few scenarios for discussion...

1. **The Missing Client.** Client is slow to respond to attorney's request for information needed to complete final accounting on a probate matter, stopped communicating with the lawyer or disappeared altogether. Lawyer has a busy firm and a "let's wait until we hear from the client before taking any further steps" attitude and the case is subsequently forgotten. But then counsel for a beneficiary files a motion for an accounting.
 - a. Is the lawyer still responsible for filing a response? Will the lawyer potentially become liable for the consequences? Under what circumstances can the lawyer permit opposing counsel to try and communicate with the client? Should he?
 - b. What approaches are recommended to finding a missing client? How does a lawyer avoid disclosing confidential information related to the representation of the client when searching for the client?
2. **Client Fires Attorney But Has Not Hired New Counsel.** Client tells attorney to cease working on their matter while they obtain new counsel. Attorney is busy jumping from one emergency to the next and soon-to-be-former client's case is placed on the backburner.
 - a. What happens if a new attorney is never found? How should the lawyer handle this? What practice systems can help avoid this?
3. **The Client Who Does Not Follow Advice.** What can or should a lawyer do if the client does not follow the lawyer's advice, acts without consulting the lawyer, or acts against the lawyer's advice?
4. **Non-Paying or Unpleasant/Intolerable/Difficult Client.** Lawyer agrees to represent a client in a probate matter but after the case is filed and the lawyer has entered an appearance on behalf of the client, the client falls behind in paying the lawyer or stops paying altogether. Or it turns out the client is unpleasant and frustrating to deal with.
 - a. What should the lawyer do?
 - b. What constitutes giving a client reasonable notice of withdraw? Will a certified letter telling the client of the lawyer's intent to withdraw constitute reasonable notice? Should the lawyer also send correspondence by regular mail?
 - c. How should the lawyer handle a motion to withdraw without using a client's confidences or secrets to the client's disadvantage? How can the lawyer avoid revealing embarrassing or pernicious information about the client?
 - d. What if the lawyer determines the client is unstable?

Professionalism and Civility

Managing Risk