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WITHDRAWAL OF ATTORNEYS

Article courtesy of Hinshaw & Culbertson LLP

Risk Management Issue

May a lawyer withdraw from a matter when the client is unwilling to pay the costs associated with the engagement?

The Case

In late 2008, plaintiffs hired attorney Mary Schultz (Schultz) to represent them in the prosecution of a medical malpractice case. As part of the engagement, plaintiffs agreed that they would be responsible for the costs associated with the litigation, and authorized Schultz to advance the costs with the express requirement, in the representation agreement, that these costs be reimbursed.

At the start of the litigation, plaintiffs paid \$52,000 in costs, and by January 2012, Schultz had advanced them an additional \$34,000. However, Schultz advised plaintiffs that the case would not move forward unless they complied with the fee agreement and reimbursed her for those costs. After repeated attempts to collect payment, Schultz filed a notice of withdrawal on April 4, 2012.

Shortly after the notice of withdrawal was filed, two of the medical defendants moved for summary judgment, and plaintiffs filed their objection to Schultz's withdrawal based on that ground. At the hearing on the withdrawal motion, Schultz asked the court for permission to withdraw, but the court denied her request. Instead, the court ordered that Schultz stay in the case at least through summary judgment, even though the medical defendants agreed to strike their motions until the representation issue was resolved. The court added that it would release Schultz after she helped plaintiffs find a new attorney, but refused to address Schultz's concerns about who would pay for the costs of the continued representation. Schultz appealed.

A few months later, plaintiffs retained a new attorney, withdrew their objection to Schultz's

motion to withdraw, and subsequently moved to vacate the June 2012 order and to discharge Schultz. Schultz opposed plaintiffs' motion, arguing that the trial court should grant her motion to withdraw as of June 2012 (when she initially made the motion), instead of the March 2013 hearing date on plaintiffs' motion. The Washington Court of Appeals held that the trial court abused its discretion by refusing Schultz's motion to withdraw. Specifically, the court explained that requiring Schultz to continue representing plaintiffs resulted in an unreasonable financial burden on her, and plaintiffs rendered Schultz's representation unreasonably difficult given their dispute over fees and costs. In addition, the court made it clear that this was not a case where counsel attempted to withdraw at the eleventh hour, but rather gave her clients ample notice and time to find a new attorney as the issue of the costs and the need to find a new lawyer had been ongoing for years prior to the original motion to withdraw. Ultimately, the court decided that Schultz's withdrawal would not have materially affected plaintiffs, especially given that defendants' motions for summary judgment had been withdrawn by their counsel.

Accordingly, the appellate court directed the trial court to enter an order granting Schultz's motion to withdraw as of the original hearing date, as well as an award of costs.



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Risk Management Solution

Robbins reaffirms an attorney's right to withdraw from a matter when the client fails to reimburse him or her for costs, if that withdrawal will not prejudice the client's case, based upon substantial hardship of the lawyer if forced to continue representation, as provided in most states' versions of the Model Rules of Professional Conduct 1.16.

This case also underscores the need for clearly worded engagement letters that delineate the roles and responsibilities of both the attorney and the client — especially when it comes to payment of fees, costs and other expenses. Engagement letters should also set forth the circumstances permitting the lawyer to withdraw from the representation, consistent with the application of the rules of professional conduct. Confirming the client's ability to pay for these expenses before taking on the engagement is also advisable — especially when the costs are expected to be substantial and to increase as the representation continues.