

**ETHICS OPINION NUMBER 49  
OF THE MISSISSIPPI BAR  
RENDERED MAY 4, 1979  
AMENDED APRIL 6, 2013**

**TERMINATION OF REPRESENTATION – CLIENT FILES – CLIENT FUNDS** - An attorney may accept employment by a client who previously employed another attorney on the case provided the client had terminated the prior attorney even if the prior attorney has not released the client. The terminated attorney should deliver his office file to the client or the client's new attorney and move to withdraw as the client's attorney of record once terminated, but is entitled to payment by the client for his services rendered and expenses incurred on behalf of the client on a quantum meruit basis.

The Ethics Committee of the Mississippi Bar has been requested to render an opinion concerning specific questions based on the following facts:

1) Doe retained attorney Roe on a contingency contract. Issues were joined and ready for trial but a continuance was requested and granted. Thereafter, attorney Toe wrote to attorney Roe and gave notice that he had been retained and requested delivery of Doe's file and a bill for services rendered. Subsequently, Doe wrote to attorney Roe, advised that he had been fired, that attorney Toe had been retained, and requested delivery of his files to attorney Toe along with a bill for services rendered. Attorney Roe was willing for attorney Toe to go ahead with representation of Doe, but attorney Roe refused to deliver his office file on Doe's case to either Doe or attorney Toe until he had been paid for services rendered and expenses incurred. Attorney Roe also insisted on a conference regarding his services and refused to send Doe a bill without such a conference. Attorney Roe was also willing to meet with attorney Toe to advise him fully about the case.

2) The office file held by attorney Roe on Doe's cases consisted of items that fell into three classifications: a) pleadings, depositions, instructions, etc., which had already been filed with the Clerk among the papers of the cause; b) evidentiary matters such as annual reports filed with the State Insurance Commission, fire reports, laboratory

reports on the fire that burned Doe's home, letters to persons and parties, all of which Doe had access to or copies of; and c) copies of cases, statutes, portions of books, beefs, and other authorities which attorney Roe used in developing the case or would have used in support of Doe's position. Attorney Roe had developed, collected and procured all items in his office file at no cost to Doe, the expenses connected with same to be paid by Doe upon conclusion of the case. Doe had paid attorney Roe nothing when he fired him.

3) Roe never filed a motion to withdraw as Doe's attorney of record. When Roe refused to release his office file to Doe or attorney Toe, attorney Toe advised Doe that he would not and could not ethically represent Doe until he was released by attorney Roe. Doe had previously signed an employment agreement with attorney Toe, but Toe, upon learning of Roe's refusal to release, refused to act in any way as Doe's attorney.

The following specific questions are hereby addressed:

1) Are there any ethical restraints on attorney Toe's acceptance of Doe as a client once attorney Roe was fired?

Rule 4.2 of the Mississippi Rules of Professional Conduct (MRPC), provides that "a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the consent of the other lawyer or is authorized by law to do so."

Since attorney Roe was "fired" and thus terminated by the client, attorney Toe could accept Doe as a client once he was satisfied that Doe had terminated Roe as his attorney.

2) Are there any ethical requirements that attorney Roe release Doe as a client before attorney Toe can accept Doe as a client?

Rule 1.16(a)(3), MRPC, provides that a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the lawyer is discharged.

Once Roe was discharged by Doe, it was mandatory upon Roe to withdraw from his representation of Doe. No release by Roe of Doe was needed before Toe could accept Doe as a client once Toe was satisfied Roe had been discharged by Doe. Roe should follow the necessary procedures of the local court regarding withdrawal, including getting the permission of the court if required by the court rules.

4) Once Roe was fired, what course of action should Roe have taken regarding delivery of his office file, moving to withdraw as Doe's attorney of record, or advising Doe in writing that the attorney/client relationship had terminated?

Rule 1.16(d), MRPC, provides that:

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

Roe had the obligation of delivering his office file to Doe or to Toe if so directed by Doe even after he was terminated. Roe also has the right to be paid for his services rendered and expenses incurred to date on a quantum meruit basis. This right to payment, even though his original contract with Doe was a contingent contract, is based on Toe's request for a delivery of Doe's file and a bill for services rendered. If Doe is eventually successful and recovers a judgment, Roe is also entitled to payment for his services rendered and expenses incurred on a quantum meruit theory as per the case of *Newman v. Melton Truck Lines, Inc.*, 443 Fed.2d 897 (Miss. 1971). Because Toe could not proceed to represent Doe properly without Roe's file or without a great deal of duplication of time and expense, Roe has the professional duty to deliver the file without first being paid. Roe would have the right to proceed against Doe for payment for services and expenses on the quantum meruit theory if he were not paid in a reasonable time. If requested by Toe for a letter confirming his discharge by Doe, Roe should comply as a professional courtesy to Toe.