



ALLIED WORLD

When a Client Needs Advice on Related Issues

Sometimes lawyers are faced with the need to know how the lawyer's advice or representation of a client will affect the client in some other way that is not directly the reason for the lawyer's representation of the client. For example, a criminal defense attorney might be advising a client about whether to accept a plea offer, and the result of a guilty plea could affect the client's immigration status and might mean that the client will be deported. A lawyer who is handling a transaction or litigated claim might have a client who needs advice about the tax consequences of a proposed agreement. Lawyers with clients who are accused of fraud or misappropriation of property might be faced with having to advise the client about whether to assert his 5th Amendment privilege against self-incrimination.

Lawyers in such situations are faced with two bad choices. The first bad choice is to ignore any related issues and address only the issues for which the lawyer was specifically retained, as if those other issues did not exist. This is a bad choice because the lawyer could be liable to the client for any adverse action taken against the client if the client reasonably believed that the lawyer was protecting the client's interests in the related matters. In an attorney discipline case, a lawyer had filed an appearance in a case to argue one motion and to represent the client at a hearing. In the disciplinary report, the Board found that the attorney's general appearance created a duty on the part of the lawyer "to see that his client's rights were protected" until he was granted leave of court to withdraw. *In re Berkos*, 93 Ill.2d 408 (1982). In *Nichols v. Keller*, 15 Cal. App. 4th 1672, 19 Cal. Rptr. 2d 601 (1993), the court held that a Workers' Compensation attorney may be liable for malpractice for failure to advise the client about possible third party actions. A lawyer's silence about any third party claims does not discharge the lawyer's affirmative duty to ensure that the client understands any limits on the work that the attorney will perform. *Campbell v. Fine, Olin & Anderson, P.C.*, 168 Misc. 2d 305, 642 N.Y.S.2d 819 (1996).

The second bad choice is to try to advise the client on all possible issues, whether or not the lawyer is competent to provide such advice. Advising a client in an area of law in which the lawyer is not experienced is an invitation for an error to occur. For example, in the matter of *In re Drew Neal*, 20 P.3d 121 (N.M., 2001), a criminal defense trial lawyer agreed to handle the appeal of his client's conviction although he was not adequately familiar with appellate procedures. His failure to file a timely notice of appeal, Statement of Issues, Docketing Statement and designation of the proceedings resulted in the dismissal of the case for failure to perfect the appeal. In the resulting disciplinary proceeding, the court stated that no lawyer should approach any task without knowledge of the applicable statutes, court rules, and case law, especially in matters with which the lawyer is not familiar.

The only choice that is good for the lawyer (and the client) is to:

- acknowledge that there are related issues,
- inform the client of those issues, and
- urge the client to consult with other lawyers who are experienced in those areas of the law.

The client needs to be informed that advice on these issues is necessary so that the client can be fully informed and make appropriate decisions. The lawyer also needs to inform the client, clearly and unambiguously, that the lawyer will not be providing such advice. Equivocal statements such as, "I don't do that work, but let me look at it and I'll get back to you," only create in the client a reasonable belief that this lawyer is going to be protecting the client's interests as to that issue. The lawyer should make it clear to the client that he or she is not going to handle that issue or activity, and make it clear that the client needs to retain another lawyer promptly to handle it.

We invite Allied World policyholders to access additional information on this and other Risk Management topics.

The lawyers' risk management website, <http://awac.lawyeringlaw.com>, contains resources as well as related topics.

Also, the **Risk Management Hotline** is included for up to 2 free hours per year, per firm of confidential advice regarding risk management questions that your law firm may have. If you are an Allied World policyholder, the hotline can be accessed through the risk management website, <http://awac.lawyeringlaw.com>. Once you log on to the website, the link to contact the hotline is on the upper left side, under the Allied World logo.

If you are not a current Allied World policyholder and would like information on our program and our risk management services, please contact your agent or broker.

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