

If a third party pays for the legal representation of another person, are they entitled to keep tabs on the case and have input in decisions and actions taken?

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No.

It is common for some potential clients that need legal help to seek and need a third party to pay for the legal representation. In that case, it is also common for that third party payer to expect to have access to the communications between the attorney and client and have input on decision making. Some payers even make demands or place conditions on the payment, sometimes out of interest in helping the client, and sometimes to serve their own interests.

But from the lawyer's perspective, to maintain ethical standards, he must resist when a third party payer has these expectations, and many times opt not to pursue the representation if the issue cannot be rectified. There are common sense reasons that any objective layman could express, and one professional reason is the need to comply with the Massachusetts Rules of Professional Conduct. Specifically the rules that apply are 1.3, 1.6, and 1.7 which are in pertinent part:

RULE 1.3: DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client. The lawyer should represent a client zealously within the bounds of the law.

RULE 1.6: CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal confidential information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

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RULE 1.7: CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a

former client or a third person or by a personal interest of the lawyer.

- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (2) the representation is not prohibited by law;
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
 - (4) each affected client gives informed consent, confirmed in writing.

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Comment

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Interest of Person Paying for a Lawyer's Service

[13] A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. See Rule 1.8(f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

Another good reason is the attorney-client privilege. The basics are that a client wants to have his communication with his attorney to be protected from disclosure, for many reasons, one being that they may be in litigation in the future and it will damage them to have the communication revealed. The attorney-client privilege allows a client to keep his communications with his attorney from disclosure. If a third party is present during the communication, or if that information is later revealed, the attorney-client privilege could be attacked. This means the client's adversary (the other side) may be entitled to the confidential information because it was not treated properly.

If you are intending on paying for the legal representation of another party, it may be that you care for them or seek to make sure things are done right. It is important to understand that purchasing legal services is different than anything else, and your seeking to be privy to the confidential information that otherwise would also be covered by the attorney-client privilege, can harm the very person that you are trying to help. Instead of seeking to control the matter and placing demands on the payment of your money that only an unethical attorney would accept, the better course of action is to find an ethical attorney and trust that the attorney will have the client's best interests at heart. And if a lawyer resists the types of demands discussed in this post that would be the first indication that lawyer may be a good choice.

If you are seeking an attorney that has his client's interests at heart, feel free to give this office a call.

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