

LAW CURRENTS An informational newsletter from Richard A. Klass, Esq.

What's Left Unsaid Says It All

The court reporting agency is in the business of making stenographic records of depositions and proceedings in litigation. A law firm ordered the services of the court reporting agency's stenographers to take down witnesses' testimony in various personal injury and medical malpractice cases.

The law firm broke up and its partners agreed to close their firm, discharge its liabilities and settle all accounts. In their settlement of their dissolution, the partners agreed to remain liable for all debts, liabilities and other obligations of the firm; reimburse disbursements and expenses incurred by the firm; and be personally responsible for an obligation of the firm.

Unfortunately, the court reporting agency had not been paid for services rendered in some of the cases previously handled by the law firm. The agency retained **Richard A. Klass**, *Your Court Street Lawyer*, to collect on the unpaid invoices.

Attorneys Are Responsible for Stenographic Services:

At one time, there was a difference of opinion as to whether an attorney who orders a court reporter to record testimony at a deposition is liable for the charge. Some court decisions held that the attorney was merely an agent of a disclosed principal (client) and was not responsible and the client was liable to pay the bill. Other court decisions recognized that the attorney was the one ordering the services and the client had little to nothing to do with the decision, and it put a great burden on the court reporting company to pursue its bill against an unknown client. Ultimately, the New York State legislature resolved the matter by enacting a special law to cover payment of these charges.

According to General Business Law § 399-cc, an attorney who orders or requests stenographic services is responsible to pay for such services:

Notwithstanding any other provision of law to the contrary, when an attorney of record orders or requests either orally or in writing that a stenographic record be made of any judicial proceeding, deposition, statement or



interview of a party in a proceeding or of a witness related to such proceeding, it shall be the responsibility of such attorney to pay for the services and the costs of such record except where:

1. payment is otherwise provided by law or where the attorney is providing representation through a not-for-profit provider of criminal or civil legal services; or
2. the attorney expressly disclaims responsibility for payment of the stenographic service or record in writing at the time the attorney orders or requests that the record be made.

Based upon the above statute, the law firm could be held liable for the bill. However, knowing that the law firm was dissolved, it was crucial to collection to also sue the individual former partners.

Certification of Expenses in Personal Injury Cases:

By court rule, when a personal injury and medical malpractice action settles, the attorney must file an Office of Court

Administration (“OCA”) Closing Statement, wherein he certify the expenses paid on behalf of his client. See, NY R A DIV 2 DEPT § 691.20 (“13. Itemized statement of the amounts of expenses and disbursements paid or agreed to be paid to others for expert testimony, investigative or other services properly chargeable to the recovery of damages together with the name, address and reason for each payment”).

On a settled case, the court rule further creates a special account in which the moneys are to be held pending payment of the disbursements. See, NY R A DIV 2 DEPT § 691.20(d) “Deposit of Collections; Notice. (1) Whenever an attorney, who has accepted a retainer or entered into an agreement as above referred to, shall collect any sum of money upon any such action, claim or proceeding, either by way of settlement or after a trial or hearing, he shall forthwith deposit the same in a special account in accordance with the provisions of Rule 1.15 of the Rules of Professional Conduct. Within 15 days after the receipt of any such sums he shall cause to be delivered personally to such client or sent by registered or certified mail, addressed to such client at the client's last known address, a copy of the closing statement required by this section. At the same time the attorney shall pay or remit to the client the amount shown by such statement to be due the client, and he may then withdraw for himself the amount so claimed to be due him for compensation and disbursements.”

Discovery of OCA Closing Statements Sought:

It was alleged that the law firm previously settled some of the cases in which payment for the court reporting services was sought. Therefore, a lien existed upon any settlements to the extent that the bills were unpaid and enforcement could be pursued against the individuals. In responding to the individual attorneys’ motions to dismiss the lawsuit against them, it was urged that discovery be had in the collection case in order to seek the production of the OCA Closing Statements in those settled cases to ascertain whether the attorneys stated in them that all expenses of litigation, including the court reporting company’s bills, were paid. See, *Cantor v Levine*, 115 AD2d 453, 453 [2d Dept 1985] (“When knowledge of facts is necessary for a party to properly oppose a motion to dismiss, and those facts are within the sole knowledge or

possession of the movant, discovery is sanctioned if it has been demonstrated that such facts may exist (CPLR 3211[d]; *Cosmos Mason Supplies v. Lido Beach Assoc.*, 95 A.D.2d 818, 464 N.Y.S.2d 12).”).

Confronted with the opposition to their motions to dismiss, the former law firm and its individual partners agreed to settle the lawsuit and enter into an agreement to pay the court reporting agency for services rendered.

— Richard A. Klass, Esq.

Richard A. Klass Awarded General Practice Section Award

The New York State Bar Association’s *General Practice Section Award* is given annually, or at the discretion of the **General Practice Section**, to honor an individual who is outstanding, innovative, and has made significant contributions to improve the daily practice of law for general practitioners in New York State.

We are pleased to announce that **Richard A. Klass**, *Your Court Street Lawyer*, is the recipient of the *2018 General Practice Section Award*. It was presented at the General Practice Section’s Annual Meeting, on January 15, 2019.

This award recognizes a person who has contributed their time and expertise to improve the daily practice of law for general practitioners in New York State, and who has demonstrated a strong dedication to the profession. Consideration is also given for involvement in NYSBA and/or General Practice Section activities.

Richard A. Klass, Esq., maintains a law firm engaged in civil litigation at 16 Court St., 28th Fl., Brooklyn, NY. He may be reached at (718) COURT•ST or RichKlass@courtstreetlaw.com with questions. Prior results do not guarantee a similar outcome.

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