

Associate Suspended for Double-Crossing His Firm

By [Ian S. Clement](#), Litigation News Associate Editor

A state disciplinary committee delivered a one-year suspension from the practice of law to Gary Robert Novins for engaging a client in an unethical, dishonest, and misrepresentative personal services agreement. [Matter of Novins](#). Attorneys who seek to profit from their firm's malpractice subject themselves to potential disciplinary action.

Attorney Offers to Help Client Sue Firm for Malpractice

Ginarte O'Dwyer Gonzalez Gallardo & Winograd LLP assigned Novins to work on a personal injury case involving a New York City off-duty police officer who had been shot in a bar by another off-duty New York City police officer. The firm served a summons and complaint on the city but failed to serve the individual officer. The New York Supreme Court granted the city's motion for summary judgment on the personal injury action on the grounds that the city had not negligently supervised the officer who shot the firm's client.

After the firm lost the client's personal injury case, the client threatened to sue the firm for malpractice. Novins subsequently contacted the client proposing to provide evidence of the firm's malpractice to the client in return for a percentage of the recovery on the personal injury case and the resultant malpractice action. After initially contacting the client, Novins threatened to destroy the evidence of malpractice to get the client to acquiesce to the financial recovery in the malpractice claim. Novins negotiated a 45 percent contingent fee as compensation for his "extraordinary efforts" in the personal injury action and because his testimony would require him to leave the firm.

The firm then discovered Novins' agreement with the client, but did not terminate his employment. The firm subsequently acquired evidence of Novins' threats to destroy evidence in the client's malpractice case against the firm. The firm deposed Novins in the malpractice case, and Novins denied that he had accused the firm of malpractice. Shortly thereafter, the client and the firm filed disciplinary complaints against Novins.

Disciplining the Associate

The [New York State Bar Departmental Disciplinary Committee](#) brought six charges against Novins for violating rules of professional responsibility and professional conduct: (1) entering into an agreement for an illegal or excessive legal fee, acquiring a proprietary interest in a client's cause of action, which exceeded a reasonable contingent fee, and conduct that adversely reflects on fitness as a lawyer; (2) acquiescing in the payment of compensation to a witness contingent upon the outcome of the case; (3) committing misconduct by entering into an agreement—in exchange for a percentage of the net recovery—against the law firm while he was still employed by them; (4) conduct involving dishonesty, fraud, deceit or misrepresentation; (5) making frivolous assertions in a proceeding which served merely to harass or injure another; and (6) conduct prejudicial to the administration of justice.

The committee found that the associate's actions reflected adversely on his fitness as a lawyer and involved dishonesty, fraud, deceit, or misrepresentation. The committee further noted that the client was the firm's client and not that of the associate. Further, the associate owed a duty of loyalty not only to the client but also to his former law firm.

Section leaders agree that Novins' actions were unethical. "The associate's actions warranted serious discipline, because his misconduct involved a series of rule violations and breaches of duty to both the

former client and the law firm,” says [Thomas G. Wilkinson](#), Philadelphia, PA, cochair of the Conflicts of Interest Subcommittee of the ABA [Section of Litigation](#)’s [Ethics and Professionalism Committee](#).

“This is nearly an unbelievable set of facts that clearly calls into question Novins’ honesty, trustworthiness, and fitness as a lawyer,” says [Nicholas Reuhs](#), Indianapolis, IN, co-chair of the Conflicts of Interest Subcommittee of the Section of Litigation’s Ethics and Professionalism Committee. “The role of an associate is complex. An associate owes all of the duties owed by an attorney to a client. However, an associate also has duties of loyalty and obedience to the firm,” adds Reuhs.

What Actions Should Lawyer’s Take if They Discover Malpractice?

“When a lawyer believes that malpractice has been committed, he or she should notify the law firm’s general counsel or risk management officer and file a report, timely made, to the professional liability insurance carrier,” says Wilkinson. “Prompt efforts need to be made to remedy any harm or prejudice to the client, and the client should be invited to review the matter with independent counsel to ensure the advice rendered is not shaded by the law firm’s interest in avoiding liability exposure,” says Wilkinson.

Keywords: malpractice, discipline, side-agreement, attorney-as-witness, loyalty, suspension, excessive contingent fee

Related Resources

- » [Matter of Novins](#), 2014 NY Slip Op 03465 (N.Y. App. Div. 1st Dep’t May 13, 2014).
- » [DR 1-102](#).
- » [DR 2-106](#).
- » [DR 5-103](#).
- » [DR 7-109](#).
- » [Rule of Professional Conduct 3.1](#).
- » [Rule of Professional Conduct 3.4](#).
- » [Rule of Professional Conduct 8.4](#)

Originally published in Litigation News online, October 16, 2014. © 2014 American Bar Association. Reproduced with permission. All rights reserved.

http://apps.americanbar.org/litigation/litigationnews/top_stories/101614-malpractice-evidence-ethics.html