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PROFESSIONAL LIABILITY BLOG

Borrowing Money from a Client Equals Disaster for Missouri Attorney

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The realities of running a business can sometimes interfere with the practice of law. When a lawyer needs funding to keep his or her practice afloat, a tempting source of financing might be a wealthy client with whom the lawyer has developed a relationship over the course of many years and transactions. Borrowing money from a client, however, is rife with ethical and legal ramifications.

A Game of Loans

In *Taylor v. The Bar Plan Mut. Ins. Co.*, the Missouri Court of Appeals considered whether a law firm's malpractice insurance policy provided coverage for bad loans made directly from a client to the attorney, as well as loans made by the client to a corporation based on the advice of the attorney, who received a finder's fee. No. WD76380 (Mo. App. W.D. Apr. 29, 2014). The attorney in the case was the sole owner of his law practice and was originally retained by the client to handle certain legal claims regarding trust management. The client later used the same attorney to handle some estate planning and estate administration. The facts of the case indicate the client came to rely on his attorney's advice, as clients normally should be able to do.

The dispute that provides the foundation for this case arose from two sets of loans. The first set was comprised of three loans totaling $250,000 made by the client to the attorney himself. As might be expected, when the attorney approached the client for money his law firm was strapped for cash and in need of funding. Unknown to the client, the attorney had sought funding from a number of lending institutions and had been rejected. Additionally, the attorney had multiple unpaid loans from other clients. The attorney also falsely represented he had a number of contingent fee cases that had already been settled but not yet paid, the proceeds of which would be sufficient to pay back the money to the client. The attorney drafted the notes for his client and advised him as to the method of repayment.

The second set of loans totaled $261,740; these loans were issued to a development company (another client of the cash-strapped attorney), which resulted in the attorney receiving a finder's fee. As with the previous set of loans, the attorney failed to inform his client the development company owed the attorney money at the time the attorney brought the "opportunity" to his client's attention. Not surprisingly, the client never received payment for his loans to the attorney or the development corporation.

Result for the Client

The client eventually fired his attorney and sued him for breach of fiduciary duty. The client claimed the attorney's breach of trust and deception caused him to provide bad loans. The trial court assessed judgment against the attorney, finding his breach of fiduciary duty was the proximate cause of his client's damages in the amount of $940,844.82.

The reason the case made it to the Missouri Court of Appeals was to determine whether the attorney's malpractice insurance policy provided coverage for the attorney's actions. Luckily for the client, the Court found coverage, though a strongly worded dissent by a Missouri Supreme Court judge who was specially sitting on the three-judge panel makes this case a likely candidate for review by the Missouri Supreme Court.

Lessons Learned

This case serves as another example of how borrowing money or entering into a business transaction with a client can have significant and serious consequences for the professional. While the transaction may be entered into with the best of intentions, these stories rarely come with happy endings. As attorneys and professionals gain the trust and confidence of their clients, they must never use the relationships that develop as means to unethical ends, to the detriment of all involved.

By Lawrence Hall

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