

FIRING YOUR LAWYER

The Consumer's Guide
to Firing Your
Virginia Lawyer

*(If you really think
it's a good idea...
and usually
it's NOT!)*



by Ben Glass

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So, You are Thinking about Firing Your Lawyer...

About once a week we get a call from someone who has a pending personal injury claim.

They have hired an attorney but they feel something just isn't right.

They want to fire their lawyer.

They usually have several questions:

- 1) *Can I consult with another attorney before firing my current lawyer?***
- 2) *Am I allowed to fire my lawyer?***
- 3) *If I fire my lawyer and I have agreed to pay the lawyer a contingent fee, do I owe him any money?***
- 4) *If I fire my lawyer, can the lawyer keep my file until I pay my bill?***

Sometimes they ask: I just found out that my lawyer is not licensed in Virginia. Can I fire that lawyer and NOT pay any legal fee?

Here are our general answers to these questions. Remember that each case is different and we aren't giving legal advice here. (Hey, if you knew where to look, you could find this information on the Internet.)

QUESTION #1

Can I consult with another attorney before firing my current lawyer?

ANSWER:

You have the absolute right to consult with another attorney before deciding whether to fire your lawyer.

The Virginia State Bar, in Legal Ethics Opinion 668, said that this was OK.

In fact, we recommend consulting with another attorney before you fire your lawyer.

Why?

Because we have found over the years that most clients don't really have a good reason to fire their lawyer! The advice we usually give is to go back and make an appointment with your lawyer and get whatever it is that is bugging you about that lawyer's representation off your chest!

Frankly, most client-lawyer dissatisfaction comes from a lack of communication. Maybe goals for the case were not adequately discussed at the beginning of the representation. Maybe you think that because your lawyer has not communicated with you, nothing is going on. (Usually, there is a lot going on, actually. Legal cases don't tend to get resolved overnight!)

Remember that even though you have a right to consult with another lawyer while you are currently represented, the new lawyer is ethically prohibited from taking any action whatsoever in your case until the old lawyer is discharged, withdraws, or agrees to a joint representation agreement.

Our clear recommendation: try to work out your concerns with your lawyer first.

QUESTION #2

Since the case is not over yet, does that mean the lawyer can't charge me anything?

OK, Now that I've consulted and thought about it, I still want to fire my lawyer.

I agreed to pay him a contingent fee (percentage due if a payment is made by the adverse party).

ANSWER:

Nope. The law is pretty clear that if you fire your lawyer without cause (you just like the next person better, or you are not satisfied with the way the case is going ,but the lawyer has not done anything wrong), that lawyer is entitled to be paid based on the value of his services. Lawyers call that “quantum meruit.” In practical terms, this usually means looking at how many hours a lawyer has worked on your case and multiplying it by a billable hourly rate to determine the value of the lawyer’s work.

There is a famous case in Virginia called *Heinzman v. Fine, Fine, Legum & Fine*. In that case, there was a fight over attorney fees. The client had fired the lawyer who was handling his personal injury case on a contingent fee basis. Later, a second lawyer settled the case. The first lawyer had been fired and later claimed that he was entitled to 1/3 of the total recovery eventually obtained by the second lawyer. The case went all the way to the Supreme Court! The Supreme

Court said that he was only entitled to a quantum meruit recovery (i.e., the reasonable value of his services per hour worked). You will also owe the attorney any expenses he has advanced on your behalf.

QUESTION #3

What if I have a really good reason to fire my lawyer? Does he still get paid?

ANSWER:

If you fire your lawyer with cause, he might not be entitled to a fee. There are many reasons that could be *for cause*. Maybe your lawyer really didn't do any work on your case. It might be "for cause" if you find out that your lawyer isn't even licensed in the jurisdiction where a case will be filed if it does not settle. A lawyer who is not licensed in the jurisdiction where the accident occurred, for example, should explain to you

at the beginning if he is not licensed in the other state and how he intends to handle the matter. This should not be a surprise after you have hired him as your lawyer.

QUESTION:

Even if I owe the lawyer some money, can I get the insurance company to just pay me the settlement and I'll decide when to pay the lawyer?

ANSWER:

That's probably not going to happen. The lawyer's lien or claim against your case is created by statute. (Va. Code Ann. § 54.1-3932, if you want to go look for yourself). This means that if the insurance company pays you without paying the lawyer's lien, that it might have to pay the lawyer directly out of its own (non-settlement) money. As you can imagine,

insurance companies don't like doing that one little bit.

QUESTION #5

OK, I get it, but what's so bad about that? I'm still going to fire the lawyer.

COMMENT:

Well, before you fire that lawyer, you better ask that lawyer this question: If I fire you today, how much will I owe you?

Folks call us and say they can't possibly owe the attorney much; the lawyer has not done ANYTHING on my case.

You still better ask. It's usually not true that the lawyer has not done anything on your case. In fact, at the beginning of a personal injury case, there is usually a flurry of activity, including requesting, obtaining

and reviewing medical records, talking to witnesses and the like.

This is WHY we recommend talking to the lawyer first. It all may be just a communication issue.

Here's why this is important: The second lawyer is not obligated to reduce his fee to account for the fact that you are firing your first lawyer. So, you may end up paying a ton of money to two lawyers if you proceed with firing your first lawyer without cause.

QUESTION #6

Are there any conditions upon which a lawyer can't be fired?

ANSWER:

Not really. You have an absolute right to fire your attorney. There is one little

caveat, however. If a lawyer has entered an appearance for you in a lawsuit, he can only be released from that lawsuit by court order. The judge has to agree. It is conceivable, for example, that if you wanted to fire your lawyer in the middle of trial (or even shortly before trial), a judge might not allow your lawyer to withdraw or be released from the case.

QUESTION #7

Can a fired lawyer ever get the full 1/3 fee in a personal injury case?

ANSWER:

Yes. Let's say that your first lawyer obtains an offer of \$25,000 in your case. You don't like the offer because it's too low, but that's all the insurance that is available to settle your case.

You fire that lawyer and hire another lawyer who also works on the case. That lawyer is

unable to get more than \$25,000 because of the insurance problem.

The first lawyer has actually done everything he contracted to do and is usually going to be entitled to recover his full fee. The second lawyer may also be able to recover his entire fee. (Sometimes life isn't fair and there isn't enough car insurance to go around. Check out my book, *The Ultimate Guide to Protecting Your Family from Irresponsible Drivers in Virginia* (www.TheInsuranceBook.com) to find out what you can do to prevent THAT problem from happening.)

By the way, the above case is a real case. It's called *Page v. Baskerville*. (You can protect yourself against underinsured drivers. See my video at www.AgentMalpractice.com)

QUESTION #8

If I fire my lawyer, can he keep my file until I pay him?

ANSWER:

It depends on what part of the file we are talking about. The Virginia State Bar answers this in its Frequently Asked Questions portion of its site and I've cut and pasted that answer here:

The first is: "all original, client-furnished documents and any originals of legal instruments or official documents." Those documents are deemed to be the client's property, and the attorney must unconditionally return them to the client upon request.

The second category includes lawyer/client and lawyer/third-party communications; copies of client-furnished documents (unless the original has already been returned); working and final drafts of legal instruments; official documents; investigative reports; legal memoranda and other attorney work-product documents; research materials; and copies of prior bills. For this second category, a lawyer may charge the client for the expense of making

a copy of the items for his own retention.

For both of these categories, an attorney must provide the requested items regardless of whether the client has paid his bill. A lawyer may ethically pursue all normal collection options against a former client for unpaid fees; however, the retention of the file must never be held up in exchange for payment of the bill for fees, the copying cost, or other costs associated with the representation.

A third category includes copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations or difficulties arising with the attorney/client relationship. A lawyer is not required to provide those items to the client. It is important to note that attorney work product is not in this category. An attorney must provide copies of things like his research, witness interview notes, drafts of documents and outlines of case strategies

to the client upon request, as those items are within the second category discussed above.

QUESTION #9

My lawyer left his firm? Whose client am I now?

The Virginia State Bar gives this answer:

No one “owns” a client. Clients in no way “belong” to a particular attorney or to the firm. Clients retain the right at all times to fire and/or replace their attorney.

This common misconception frequently arises when a lawyer’s departure from a firm, or a firm dissolution, is less than amicable. Arguments arise file-by-file regarding which attorney or firm gets to keep which clients. The clients gets to choose who will represent them in the future. As recommended in a prior ethics opinion, the preferred way to handle

this issue is for the departing attorney and the firm to send a joint letter to each client that the attorney served. That letter should, in a neutral tone, recommend that the client needs to select one of the following options: stay with the firm, go with the departing attorney, or hire new counsel altogether.

The client should be encouraged to make that selection as quickly as possible to ensure a smooth transition. The physical (or electronic) file should follow that choice. No attorney or firm should hold the file “hostage.” A seemingly obvious, but at times disregarded, point is that the remaining firm must always provide the contact information for the new attorney whenever asked. A firm must not refuse to provide that new address and phone number to clients, potential clients, and other attorneys who contact the firm seeking the departed attorney.

Go to the next page to read Ben’s tips for not hiring the “wrong” lawyer in the first place.

How to Avoid Hiring the Wrong Lawyer for your Case

Here are some quick tips for avoiding the unhappy times of having to fire your lawyer.

Remember, each case is different. You really should get my book, *The Truth About Lawyer Advertising*, as well. It is, if I say so myself, a great consumer guide. (You can get a copy free at www.TheTruthAboutLawyerAds.com)

Here we go:

- 1) *Get a recommendation*** from someone who has actually used that lawyer for the same type of case you have. Hiring your deadbeat brother-in-law's DUI attorney for your personal injury case might not be such a good idea.
- 2) *Visit the rating sites.*** They are pretty good. www.Avvo.com is reputable. Also check out www.SuperLawyers.com

- 3) *Check to see whether your lawyer is a board certified specialist.* Virginia has no state specific specialization process, but many experienced attorneys have become board certified by a national organization. Visit the National Board of Legal Specialty Certification, www.NBLSC.us
- 4) *Check to see if your attorney is recognized by Best Lawyers in America.* Another pretty good place to go and check, www.BestLawyers.com. Better safe than sorry!
- 5) *To get a good “feel” for a lawyer,* call the office and ask for any books or white papers they have written, and any CDs or DVDs on your case subject area that they have recorded. Most lawyers will gladly send you their new client information package.

Again, this isn't, by any means, a complete list. You need to do your homework. Visit websites, watch YouTube videos, and make in-person appointments.

Ben Glass

About Ben Glass

Benjamin W. Glass, III, is a nationally recognized board certified personal injury, medical malpractice and disability insurance attorney in Fairfax, Virginia. Ben Glass is also the nation's premier authority on effective, ethical and outside-the-box marketing for attorneys. He is a sought after speaker and author and has been featured in TRIAL magazine, Wall Street Journal Online and The Washington Post, among others. Ben is the author of 10 books, including *The Truth About Lawyer Advertising* (available on Amazon.com).

Books by Ben Glass

- *Robbery Without A Gun—Why Your Employer's Long-Term Disability Policy May be a Sham* (www.RobberyWithoutAGun.com)
- *Five Deadly Sins That Can Wreck Your Injury Claim* (www.TheAccidentBook.com)
- *Why Most Medical Malpractice Victims Never Recover a Dime* (www.TheMalpracticeBook.com)
- *Don't Gamble With Your Social Security Disability Benefits: What Every Virginia Resident Needs to*

- Know To Win a Social Security Disability Case* (www.TheSocialSecurityBook.com)
- *The Truth About Lawyer Advertising* (www.TheTruthAboutLawyerAdvertising.com)
 - *The Ultimate Success Secret* (www.Ultimate-Success-Secret.com)
 - *Carry Your Own Leash: The Entrepreneur's Guide to Autonomy and Success* (www.CarryYourOwnLeash.com)

In addition to the above websites, you can find Ben Glass at the following websites:

- www.BenGlassLaw.com
- www.FairfaxAccidentAttorney.com
- www.VirginiaMalpracticeNews.com
- www.Virginia-Small-Business-Marketing.com
- www.Glazer-Kennedy-Virginia.com



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