

## PRACTICE ADVISORY

### Holding Client Files as Ransom

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Practitioners are often faced with situations where a client refuses to pay their fees, even once the work is completed. What should or can CPAs do in these instances? Can you simply resign in the middle of an engagement? Can you hold onto client records? There are several rules of professional conduct that practitioners can turn to for guidance in these situations.

#### **Resignations are not to be taken lightly**

Rule 201 “Maintenance of the good reputation of the profession” and the related Guidance state that “the auditor should never lightly resign an appointment before reporting.” Reasons for resigning may include loss of trust in the client; the fact that the auditor is in a situation where the auditor's independence or objectivity could reasonably be questioned; or inducement by the client to perform illegal, unjust or fraudulent acts. Non-payment of fees on its own is not considered “good and sufficient reason” for a practitioner to resign from an engagement, unless there are fees outstanding from the previous year, in which case Guidance paragraph 1 to rule 204.4 (36) and (37), relating to overdue fees and independence, may apply.

#### **Fees are generally matters of contract law and not professional conduct considerations**

Fee arrangements should be clearly stated in an engagement letter. Although the engagement letter, as a contract, can make contractual arrangements regarding actions to be taken in the event of unpaid fees, the concern is making sure the client understands and agrees to the specific terms and consequences. The latter step is often overlooked, which could lead to professional conduct issues. If a client makes a reasonable request for additional detail and explanation in order to understand a billing, a member or firm is expected to provide such information. (Guidance to Rule 214: Fee quotations and billings.) The *Professional Engagement Guide* contains the following wording with respect to sample engagement letters and unpaid fees: “Although fee-related issues are normally considered contractual matters, there are some situations where termination of services could result in professional conduct issues. Because of possible legal implications and the requirements of certain other legislation, the auditor is always advised to obtain legal advice before suspending services. If the firm plans to request a retainer before work commences (to avoid potential fee collection issues), refer to the use of retainers in the provincial Code of Professional Conduct/*Code of Ethics*.”

#### **Client's interests are paramount**

There is guidance in Rule 302 “Communication with Predecessor”, which states that “on the part of the predecessor, there must be readiness to cooperate with the successor, recognizing that the client's interests are paramount whether or not there are fees owing to the predecessor by the former client.” Although this Rule refers to situations where a client is changing accountants, this recommendation also applies when a client is refusing to pay their fees.



Practitioners need to remain professional and ensure that the client's interests are met. As such, you cannot withhold information from a client in an attempt to influence payment of fees. This means returning the client's books and records as well as providing the client with the finished product (such as the audited financial statements).

### **Client records, not practitioner files, are to be returned**

The question then arises as to what constitutes the client's books and records and what is considered the CPA's working papers. Generally, source documents such as bank statements and original copies of invoices, contracts, etc. are the client's property and must be returned. If a practitioner maintains the client's general ledger, this must also be provided to the client either in hard copy or electronic format. However, the practitioner's working papers that support the work being performed (including Caseware audit/review files) are the property of the practitioner and do not need to be handed over to the client (refer to Rule 303 regarding provision of client information). Information should be provided within a reasonable period of time, keeping in mind the client's interests.

### **Consider fees mediation services for disputes regarding amount**

The next time you're faced with a client who refuses to pay their fees, remember the above guidance so as to ensure that you remain onside with the rules. You may also want to make use of CPA Ontario's fees mediation service, offered free of charge when fee disputes arise between CPAs and their clients. Used wisely and in good faith, it can help both parties find fair solutions, efficiently and quickly. Access to the fees mediation service may be initiated by either the CPA or the client.

For further guidance, members are encouraged to contact a Practice or Member Advisor:  
Phone: 416-962-1841, ext. 4456 or toll free at 1-800-387- 0735, ext. 4456.  
Email: [practiceadvisory@cpaontario.ca](mailto:practiceadvisory@cpaontario.ca) or [memberadvisory@cpaontario.ca](mailto:memberadvisory@cpaontario.ca).

As no two situations are identical, CPA Ontario members are responsible for ensuring that their own situation complies with the CPA Code of Professional Conduct, By-law and Regulations.