
Best Practices Advice from the Bully Pulpit:

Court Of Appeal Uses Published Decision To Shame Lawyer When No Legal Malpractice Claim Arose From Bad Conduct

By Carl Mueller, Esq., The Maloney Firm, APC

In *White v. Molfetta* (2021) 64 Cal.App.5th 628, a California Court of Appeal decision filed on May 24, 2021, the court made the unusual choice to publicly and explicitly shame an attorney, writing that the court “cannot condone such laxity on the part of a lawyer toward his client,” and stating the case was “publish [ed] in the hope the embarrassment we [the court] feel about the case can lead to improvement.” While the law within the decision is unremarkable, the purpose of the decision should serve as a reminder to all practitioners of the duties they owe to their clients.

The Issue

The plaintiff, White, was convicted of multiple crimes, leading to his incarceration. The defendant, Molfetta, was appointed to White’s defense in the underlying criminal trial. After White’s conviction, Molfetta filed a notice of appeal. Another attorney, Morse, represented White on appeal. White’s appeals, all the way through the California Supreme Court, were unsuccessful.

White then wanted to begin a federal habeas corpus petition, and as such wrote to Molfetta to obtain his client file. Molfetta did not respond. White subsequently complained to the Cal. State Bar that Molfetta had failed to turn over the client file, but Molfetta again failed to produce the client file. White then asked the criminal court to order the client file produced, but to no avail. White also proceeded to filing the civil action underlying the appeal, but Molfetta still failed to provide the client file.

Ultimately, after reneging on his promises and ignoring court orders to hand over White’s client file, Molfetta delivered the client file more than a year after first being asked. However, even though he now had the client file, White failed to timely file his habeas corpus petition.

The Court's Decision

Based on these facts, the Court dismissed White's civil case against Molfetta for a few simple reasons:

- a) White's state court appeals were not affected by Molfetta's failure to turn over the client file, because neither White or Morse had actually made an explicit request to White to turn over the client file until the state court of appeals process concluded; and
- b) White's failure to timely pursue his habeas corpus petition in Federal Court meant that Molfetta's delay in turning over the client file did not cause any harm to White.

In short, there was no liability for Molfetta, despite his clear dereliction in duty to his client, because there was no harm actually caused by his bad acts. But, the court wanted to take the opportunity to impart the following wisdom on attorneys:

We are a profession. Like doctors and ministers and scientists, we have an obligation to perform to the absolute best of our abilities regardless of our own circumstances or those of our client. We owe more than was provided here. But on the facts of this case, the law does not permit a recovery.

The Takeaway

However, a better lesson may be that anytime an attorney comes into a case, it is a best practice to send a clear and explicit request to predecessor counsel for the entirety of the client file, pursuant to Cal. Rules of Professional Conduct 1.16. Something successor counsel, Morse, simply did not do.



About the Author:

Carl Mueller

Carl Mueller is a business litigation attorney that represents clients in all phases of civil litigation. Mr. Mueller's practice has a focus on attorney-client disputes of all kinds. If you have questions regarding this article contact Carl Mueller at cmueller@maloneyfirm.com.