

Addressing the Need to Cooperate

by

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Despite articles previously published by this office emphasizing the importance of cooperation in a disciplinary investigation, some lawyers still disregard their duty to cooperate.

Without belaboring the point, lawyers are under an obligation to cooperate in the investigation and resolution of complaints of unprofessional conduct. See Rule 8.1(b) of the Minnesota Rules of Professional Conduct and Rule 25 of the Rules on Lawyers Professional Responsibility. Failure to cooperate with reasonable requests during the disciplinary process may warrant discipline independent from conduct underlying the complaint. See *In re Cartwright*, 282 N.W.2d 548, 551-52 (Minn. 1979).

An excuse too often proffered in response to an allegation of noncooperation with a disciplinary investigation is that correspondence from the director of the Office of Lawyers Professional Responsibility was never received. This excuse is particularly lacking when the lawyer has maintained the same address with the lawyer registration office for years and when the director's correspondence sent to that address is not returned as undeliverable.

Rule 2(G) of the Rules of the Supreme Court on Lawyer Registration places on the lawyer the obligation to notify the lawyer registration office of any change of address. Under Rule 1(8), notice from the director's office is effected by personal service or by correspondence mailed either to a person's last known address or to the address maintained by the lawyer registration office. Therefore, any notices of investigation and/or subsequent correspondence regarding a disciplinary proceeding will be sent to the address on file with the lawyer registration office, unless a different address has been provided to the director by the respondent-attorney.

It is not enough to simply maintain an address on file with the lawyer registration office; you must also make sure to regularly check mail at that address. See *In re Anderson*, 569 N.W.2d 923 (Minn. 1997) (attorney failed to cooperate where attorney did not initially receive letters from the director because he failed to regularly check his mail, eventually received the letters, but failed to respond until compelled to do so).

A lawyer who was recently indefinitely suspended for a minimum of nine months maintained a Minnesota address with the lawyer registration office, but resided at a Wisconsin address. The lawyer claimed she never checked her Minnesota address because she "thought" only junk mail was being sent to that address. She failed to respond to a client complaint for several months, until finally compelled to cooperate by

subpoena.

It is also important to inform the director's office of any change of address during the pendency of a disciplinary investigation or proceeding. Recently, a lawyer was issued a private admonition for, among other things, moving out of state without informing the director of his forwarding address and failing to cooperate in the disciplinary investigation in violation of MRPC 8.1(b) and Rule 25.

While the director will make reasonable efforts to locate a respondent's valid address, at the end of the day, it will be assumed that a respondent has received a letter mailed by the director's office to the address maintained with lawyer registration office.

The director's only initial objective in handling a complaint is to gather all necessary facts in order to determine the next step. Regardless of any anxiety caused by receiving a letter from the director's office, once you receive such a letter your best course of action is to immediately open it and address the issues contained therein. Ignoring the director's office does not make a complaint disappear and noncooperation only makes matters worse.

In addition, the ostrich-like tactic of acknowledging the receipt of letters from the director's office, but refusing to read them will not permit you to escape responsibility for failing to respond to the requests made in those letters. See *In re Anderson*, 759 N.W.2d 892, 897 (Minn. 2009).

Slow responders and sporadic cooperators place a significant burden on a disciplinary system that is already overextended. Moreover, such behavior is often indicative of a general lack of a commitment to diligent and competent conduct, which can color the director's initial assessment of the validity of a complaint (particularly when the complaint includes allegations of neglect).

Therefore, while it will not make unethical behavior ethical and will not preclude discipline where discipline is warranted, timely, complete and candid responses to communications from the director's office will never hurt a respondent's chances of resolving a complaint favorably.