

Diligence Means Always Returning Your Clients' Phone Calls

by
Patrick R. Burns, Senior Assistant Director
Minnesota Office of Lawyers Professional Responsibility

Reprinted from *Minnesota Lawyer* (March 27, 1998)

If, Heaven forbid, a complaint should be filed against you with the Office of Lawyers Professional Responsibility, chances are good that it will involve allegations of neglect and failure to communicate. Each year about 1,400 complaints against attorneys are received by the Director's Office.

For the period 1994 through 1997, 1,695 of these complaints involved allegations of neglect and/or failure to communicate. For the same period, the Director's Office issued 154 admonitions for violations of Rule 1.4, Minnesota Rules of Professional Conduct (MRPC), and 156 admonitions for violations of Rule 1.3, MRPC. Of these, 110 admonitions were for violations of both Rules 1.3 and 1.4.

Rules 1.3 and 1.4, MRPC, are simple and straightforward. They provide:

RULE 1.3 DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 1.4 COMMUNICATION

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Relativity

There are no hidden pitfalls or tricky technicalities here. Lawyers, however, consistently run afoul of these rules. Why? In part, because lawyers have a different perception of time than the rest of the world. To a lawyer with a caseload of 100 or more files, the 30 days in which to respond to discovery requests seems to pass in an instant. To the client, whose entire life revolves around his or her case, that same 30 days seems like an eternity. Failure to appreciate this law of relativity is what gets lawyers in trouble.

A lawyer was asked by a potential client to collect on a judgment that had already been entered. The lawyer promised to review the file and get back to the client to let him know if he would take the case. A month later, having heard nothing, the client wrote to the lawyer inquiring about the status of the matter. A week after this letter, the lawyer wrote back stating he would review the file and get back to the client. Three additional letters to the lawyer from the client over the course of the next three months did not produce a

response.

Finally, the lawyer wrote to the client suggesting that the client pay for a skip trace on the judgment debtor. For the next eight months, lawyer and client traded letters and phone calls with the result that a skip trace was finally initiated. The trace revealed a car that could be levied on and the client directed lawyer to so levy. During the next four months, client sent three letters inquiring about the status of the levy. Lawyer did not respond until the end of that time and then only with a letter detailing the procedures necessary to levy on the car.

By the time the execution process was actually started, the debtor had already placed a lien on the vehicle depriving it of any value to the client. The lawyer's failure to promptly respond to his client's inquiries and his failure to promptly initiate collection procedures resulted in an admonition being issued to him for violation of Rules 1.3 and 1.4, MRPC.

In another case, a lawyer was retained to obtain a Qualified Domestic Relations Order (QDRO) on behalf of a client in order to ensure her right to her ex-husband's retirement funds. The lawyer sent a proposed QDRO to the pension administrator, who returned it with several suggested changes. The lawyer delayed making these changes and resubmitting the QDRO for five months. The second draft was returned again with suggested changes. This time, the lawyer delayed the resubmission for six months. Between the lawyer's delays, the pension administrator's delays, and the time it took to get court approval of the QDRO, the time period for approval had expired and the retirement funds were subject to being paid in full to the ex-husband.

Given that the lawyer's 11-month delay in submitting revisions to the QDRO contributed significantly to the expiration of the approval time, an admonition was issued for violation of Rule 1.3, MRPC.

How do you prevent falling into violation of these rules? Review open files on a regular basis. Set up an effective tickler system. When you review a file, don't put it away without having done something to move the case forward, even if it is only taking care of a minor administrative matter.

Don't take on new business if you can't keep up with the work you already have. A well-informed client is a happy client. Copy clients on correspondence sent and received. Return phone calls promptly or, if the press of business prevents this, have someone in the office explain why you are temporarily unavailable. Regular itemized billings to a client are a form of communication that lets the client know what you are doing.