

Get ethical

by

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Reprinted from *Minnesota Lawyer* (January 4, 2010)

January is over and many New Year's resolutions have been cast aside. "Get in shape" may be just a memory. Now you can focus on what's really important: becoming a more ethical practitioner.

There is still plenty of time to get your practice "in shape" with a few simple steps (this is not an exhaustive list):

Communicate; don't communicate. It is very important to return client phone calls and keep the client informed about the status of the matter. Rule 4.2 of the Minnesota Rules of Professional Conduct, however, says that while representing a client, you should not communicate about the subject of the representation with a person represented by another lawyer. Exceptions are when the other lawyer consents to the contact or when authorized to do so by law or court order.

Take your (client's) money to the bank. Funds received for future services belong to the client until earned and must be held in trust. In the absence of a written retainer agreement signed by the client, rules 1.5(b), 1.15(c) and 1.16(d) require that all advance fees be deposited into a trust account and any unearned portion must be refunded.

Other money matters. Rule 1.5(c) and (e) mandates that contingent fee agreements and fee-sharing agreements with a lawyer from another firm also be in writing. Rule 1.15(b) requires you to provide the client with written notice of the time, amount and purpose of a withdrawal and an accounting of the funds in the trust account. It is advisable to give monthly accountings as well as a final accounting.

Trim the fat. Times are tough, but if you feel you cannot handle your current caseload, turn new clients away. Failing to give each case the attention it demands could land you in ethical hot water. Similarly, if you get the sense that a client may be difficult and impossible to manage from your initial consultation, you can (and probably should) decline the representation.

Although there is an implied obligation to continue representation through completion once you have agreed to represent a client, there are some circumstances in which you may withdraw. For instance, you may be permitted to withdraw if the client

refuses to honor the terms of an agreement relating to the representation. But under Rule 1.16, the client must first be given reasonable warning and an opportunity to satisfy the obligation.

Avoid dishonest procrastination. Lies in response to client inquiries regarding the status of their matter are not harmless “white lies.” If you are unable to get to a client matter as quickly as the client wants, do not lie to the client just to catch a break. Clients can often be very understanding and forgiving if dealt with honestly. Our office will not be so forgiving if you lie.

Avoid unauthorized practice of law. Lawyers often commit unauthorized practice of law without even knowing it. Preventing UPL is easy: make sure you have complied with continuing legal education requirements and timely pay your annual lawyer registration fee. If someone else in your firm is responsible for payment of your lawyer registration fee and it is not paid timely, you will be suspended, they will not.

Supervise nonlawyer assistants. Rule 5.3 applies to all nonlawyer assistants utilized by a lawyer, not just employees. It applies to contract paralegals, process servers, investigators or any other nonlawyer “employed or retained by or associated with a lawyer.” You are obligated to ensure that nonlawyers under your supervision conduct themselves in a manner compatible with the MRPC. Accomplish this by making reasonable efforts to ensure that nonlawyers are trained regarding ethical issues. Promptly address issues that arise from nonlawyer assistants’ conduct.

Get help. Do you have an ethical quandary concerning your own prospective conduct? Add 651-296-3952 to your speed dial and get an advisory opinion from the Director’s Office.

In addition, struggles with alcoholism, chemical dependency or mental health issues can negatively affect your practice. Lawyers Concerned for Lawyers may be able to help. LCL offers services for lawyers, judges and law students. For free, confidential assistance or more information call 651-646-5590 or visit www.mnlcl.org.