

Top 10 Excuses For Neglect And Noncommunication

by

Betty M. Shaw, Senior Assistant Director
Minnesota Office of Lawyers Professional Responsibility

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Each year the Director's Office issues between 100 and 200 admonitions to attorneys for isolated and nonserious misconduct. Every year without exception, the largest number of admonitions are for violations of Rule 1.3 (neglect) and/or Rule 1.4 (inadequate communication). Every year attorneys from the Director's Office write articles and speak at dozens of CLEs, to bar groups and before other attorney organizations about the discipline system, how to avoid complaints, and the ethical issues that arise in various practice areas.

The problem of neglect and noncommunication is frequently included in the presentations. Nevertheless, the new millennium is almost certain to show a continuation of this pattern. How can this be?

The following is a top 10 list of excuses offered by attorneys for their neglect and noncommunication:

10. I wasn't going to get paid anyway.

An attorney failed to submit proposed findings and argument in the client's matter. When the client complained, the attorney said, "I figured I would just limp along home, doing as little as possible since I wasn't going to get paid anyhow." The lawyer never advised the client of his concerns about payment. From his knowledge of the client's finances, the attorney believed he would not be paid for further work on the matter. Despite his refreshing candor, the attorney received an admonition for violating Rules 1.3 and 1.4, MRPC.

9. I've been sick, tired, out-of-town.

After agreeing to represent a client the attorney was injured and unavailable for a substantial amount of time. After the attorney returned to work she was swamped with work and failed to prepare the promised martial termination agreement for seven months. See "When You're Sick (And Tired) of It!" in the March 20 issue of *Minnesota Lawyer*. Lawyers must have appropriate alternatives in place to ensure that client matters do not suffer when situational difficulties arise.

8. I didn't know how to proceed.

Sometimes an attorney will accept representation outside of her area of expertise or a more complex issue will arise in her current area of practice that she does not know how to handle. Not wanting to admit a lack of knowledge to the client, an attorney set the file aside for so long that the client complained that nothing was happening on the matter. Ignoring a file does not make the problem go away. Knowledge, wisdom or inspiration to resolve a thorny problem is not likely to come from ignoring the matter. File aging produces complaints more frequently than knowledge or inspiration.

7. I got bored with the matter and couldn't make myself work on it any more.

An attorney with a busy practice received numerous neglect complaints. Her colleagues described her as a "good attorney," but often had trouble getting her to return phone calls and to complete routine tasks to close out the file. The attorney finally acknowledged that once she had finished the problem-solving or "interesting" part of the case, she got bored with the file and had a difficult time getting back to the routine work of tying up the loose ends.

6. My secretary/paralegal was supposed to follow-up on that.

While support staff can make a practice more efficient and cost effective for the client, the attorney is responsible for the file. Blaming it on the staff not only fails to absolve the attorney of a Rule 1.3 or 1.4 violation, but may result in a Rule 5.3, MRPC (responsibilities regarding non-lawyer assistants) violation as well.

5. I didn't know how to break the bad news to my client.

When the case turns sour or the ruling is (or almost certainly will be) adverse, hiding the file or hiding from the client will not improve the situation. If attorney neglect or malpractice is (or could be) part of the reason for the bad result, immediate candor is even more essential. Several attorneys have received public discipline for lying to the client about the status of their matter.

4. The client is so unreasonable and difficult I hate to work on the matter or talk to the client.

Dealing with difficult people is part of the practice of law. Rule 1.16, MRPC, provides that an attorney may withdraw from representation if the client makes the representation unreasonably difficult. Neglecting the file and failing to communicate regarding the problem only gives a difficult client a valid reason to complain.

3. I have so much work to do there aren't enough hours in the day to get it all done.

The comment to Rule 1.3, MRPC, provides, "A lawyer's workload should be controlled so that each matter can be handled adequately." An attorney must control his workload so that no client matter is neglected. When attorneys find that they cannot keep up with their workload, they should obtain client consent to enlist another attorney's assistance or withdraw at a point where the client's interests will not be harmed by the withdrawal.

2. It just fell through the cracks.

No one expects perfection. There will be occasions when an attorney misses a deadline and incorrectly calendars a meeting, but good office systems are essential for ethical and competent practice. Every attorney should periodically review his or her diary/calendar system, file inventory, file call-up and conflicts check systems, and systems for ensuring prompt return and recording of phone messages. Where problems with office procedures persist, attorneys are likely to be placed on supervised probation to make certain that appropriate systems are not only in place, but are routinely followed by the attorney.

1. I'll do it tomorrow.

Procrastination is probably the number one reason, as well as the number one excuse, received for neglect and inadequate communication. To procrastinate is human, but when procrastination becomes a habit it can create very real practice problems leading to complaints and eventually to serious discipline. If you are a

procrastinator by inclination, you may need to put some procedures in place that help you overcome this potentially dangerous practice.