

LIGHTNING ROUND: ETHICS TIPS

BY SUSAN M. HUMISTON ✉ susan.humiston@courts.state.mn.us



SUSAN HUMISTON is the director of the Office of Lawyers Professional Responsibility and Client Security Board. Prior to her appointment, Susan worked in-house at a publicly traded company, and in private practice as a litigation attorney.

Got a few minutes? Here are several legal ethics tips to improve your practice.

Want to avoid an ethics complaint? Communicate often and well with your client, even (especially) the bad news.

Even if there is no news, have a system that allows for periodic check-ins with your clients on open matters. This is good customer service and allows you to stay on top of updates like changed addresses or emails. Clients will appreciate hearing from you, and this will help you spot (or stay on top of) emerging issues in the relationship that could give rise to a complaint.

Acknowledge and apologize when you make a mistake.

You will make mistakes, big and small, and how you choose to handle those situations makes a difference.

Sit on that angry or reactive response email.

Incivility is on the rise everywhere and you will do well to take a step back when you read something that prompts a strong reaction. It is far too easy to respond nowadays, and it may feel like an immediate response is required. I bet it is not necessary. And I promise that most if not all your communications will benefit from a period of reflection.

Take care when choosing “reply all.” Similarly, stop copying your client on emails to opposing counsel unless you are okay with a “reply all” that includes your client.

ABA Opinion 503 (November 2022) opines that copying your client on communications with opposing counsel implicitly authorizes a “reply all” unless you have advised opposing counsel to the contrary. Use the “bcc” option, or forward communications to clients separately. And always pay attention to whom your electronic communications are directed, whether you are hitting “reply all” or choosing recipients. Situational awareness is critical!

Use a good representation agreement.

So many issues can be avoided by a simple retainer agreement that discusses your fees, the scope of representation, and mutual expectations. And remember, nonrefundable fees are not permissible in Minnesota, so stop describing your fees as nonrefundable. If you are charging a flat fee and want to deposit that flat fee into your business account and not your trust account, make sure you have a compliant fee agreement *signed by the client* before that fee hits your business account. Review Rule 1.5(b)(1),

Minnesota Rules of Professional Conduct (MRPC). Take time today to review your standard representation agreement.

Read all of Rule 1.5, MRPC, entitled “Fees,” if you haven’t lately to ensure your fee practices are in line with your ethics obligations.

While you are at it, it never hurts to review the rules in their entirety. They are a quick read if you skip the comments.

Send bills regularly and discuss with your clients any surprises or unexpected fees.

One of the things that really bothers me is when a lawyer does not bill clients promptly or fails to address client concerns regarding bills. Your clients should not be surprised, and if something unexpected happens, get in front of it through effective communication. To me, this isn’t just a customer service issue but part of an ethical practice.

Use a reliable calendaring system.

And don’t forget to have a process that ensures someone else is double-checking that things are calendared appropriately, particularly critical dates such as statutes of limitations or other key deadlines. Effective safeguards are what make a system reliable.

Review your conflicts-checking practice.

Is your process robust? Do you have an effective process to ensure that a conflicts check is re-run when new names and entities enter the relationship after the matter has commenced?

Make today the day you pick up that task or matter that you have been avoiding.

There is never an end to work that needs to get done, so it can be easy to use other work to avoid those problematic tasks or matters. That is a slippery slope, my friend. Start small. You can do this.

Use good matter-ending practices.

It can be easy to just move onto the next matter but ensuring you have appropriately closed out an engagement will pay dividends. Have you refunded any unearned fees or unused costs? Does the client know what you are going to do with their file? Does the client think you are doing something when you consider the engagement complete?

Create a succession plan if you are a solo attorney or not associated with someone who could step in if something dire happens.

I'm on a Minnesota State Bar Association committee charged with preparing

materials that we hope will make this easy for you. In the meantime, my Bench & Bar article from November 2016, "What happens to clients upon your death or disability," and Martin Cole's April 2010 article, "Succession planning and trusteeships," both of which can be found on our website, are great places to start.

Take time to recharge.

Legal practice is challenging and stressful. Taking time away allows you to be your best for your clients. Try to practice this if it does not come naturally to you!

Have an ethics question or concern? Don't guess or ask a friend. Call us.

Every day an experienced ethics lawyer in our office is available to give you free advice to help you through a specific ethics situation. Call 651-296-3952, or if the situation is complicated, send us a note with the details through our website at lprb.mncourts.gov (under the Advisory Opinions tab).

I hope you are enjoying Fall. If you have a topic you would like to see covered in this space, please email me at susan.humiston@courts.state.mn.us. I am always looking for ways to assist you in complying with your ethics obligations. ▲