

A Look at Lawyers' Obligation to Expedite Litigation

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As anyone familiar with the attorney discipline system knows, when clients complain to the Director's Office it is frequently about their lawyers' failure to act diligently. Members of the public do not need to be familiar with the professional conduct rules to understand that there is something unprofessional about a lawyer's failure to move the representation forward.

What may be less apparent to both the public and the bar is that in addition to the duty to the client, the lawyer also has an ethical obligation to the system to expedite litigation. Like a failure to act with diligence in representing the client, the lawyer's failure to expedite litigation can result in the lawyer being disciplined for unprofessional conduct.

The lawyer's obligation to act with diligence as it relates to the client is set out in Rule 1.3 of the Minnesota Rules of Professional Conduct (MRPC). The rule provides that "a lawyer shall act with reasonable diligence and promptness in representing a client." The comment to the rule notes that the lawyer should pursue a matter on behalf of the client despite "opposition, obstruction or personal inconvenience." The passage of time or a change of conditions can often adversely affect the client's interests. As a result, delay can cause actual harm to the client. Moreover, "even when the client's interests are not affected in substance, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness." For these reasons, the rules impose upon the lawyer an obligation to act diligently in representing the client.

The ethical obligation to act with diligence, however, extends beyond the lawyer's obligation to the client. Less well known, and perhaps less understood, is the lawyer's obligation as an officer of the legal system to expedite litigation. The lawyer's duty in this regard is set out in Rule 3.2, MRPC. The rule requires that "a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client." While disciplinary matters involving violations of Rule 1.3 occasionally involve violations of Rule 3.2 as well, the obligations imposed by the rules are different.

The comment to Rule 3.2 illustrates this by highlighting the fact that it is the system that may be harmed by the lawyer's failure to expedite litigation. "Dilatory practices bring the administration of justice into disrepute." Further illustrating the distinction between the interests of the client – which may on occasion be furthered by unreasonable delay – and the administration of justice, the comment explains: "Delay should not be indulged merely for the convenience of the advocates, or for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose."

A recent complaint to the Director alleged that the opposing attorney had failed to respond to the complainant's lawyer's discovery requests. After several months, the complainant's lawyer had submitted additional discovery demands. Neither set of discovery demands was answered for several more months. In responding to the complaint, the lawyer argued that he could not be in violation of Rule 3.2 because the

complaining party was not his client and his client was not dissatisfied with his representation. The lawyer was correct in arguing that his primary duty was to his client. However, his conclusion that Rule 3.2 was therefore inapplicable was wrong. While the lawyer's client may have been perfectly content with the lawyer's failure to respond to the discovery demands, that fact does not make the lawyer's conduct acceptable.

While the lawyer has an obligation to expedite litigation consistent with the interests of the client, realizing financial or other benefit from an otherwise improper delay in litigation is not a legitimate interest of the client. In determining whether a delay is appropriate, the question to be asked is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. If the lawyer's conduct lacks some substantial purpose other than delay, the lawyer may be in violation of Rule 3.2.