

A Penny For Your Thoughts

by
Timothy M. Burke, Senior Assistant Director
Minnesota Office of Lawyers Professional Responsibility

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Lawyers seek to maximize their efficiency by relying on nonlawyer support staff and various software programs. However, lawyers still have their obligations to be thorough in their work and to not bring frivolous claims. Ultimately, this responsibility rests with the lawyer.

In a recent matter, a lawyer represented a judgment creditor in an action to collect a debt from the judgment debtor. After making several installment payments, the debtor came to the lawyer's office and paid the remaining balance. The lawyer's staff gave the debtor a receipt which stated, "Paid in Full."

By letter to the debtor dated the same day, however, the lawyer demanded full payment of the debt. The debtor did not respond.

About two months later, the lawyer served on the debtor written discovery seeking financial information.

In the transmittal letter the lawyer stated, "The balance due on the judgment is \$.01, with interest accruing daily."

Again, the debtor did not respond.

Approximately five weeks later, the lawyer wrote to the debtor, stated that the debtor had not responded to the written discovery and stated, "I suggest that you do not ignore this letter and the sanctions of Rule 37 [Minnesota Rules of Civil Procedure], for among other things you may be required to pay attorney's fees if further proceedings occur." That same day, the lawyer served on the debtor a motion to compel discovery. The lawyer requested the court to order the debtor to respond to the lawyer's written discovery and pay \$150 in attorneys' fees as a sanction.

In response, the debtor wrote a letter in which he told the court and the lawyer that the debtor had paid the debt, the lawyer's own papers claimed a debt for only 1 cent and the debtor intended to file a complaint with the Office of Lawyers Professional Responsibility. The lawyer then filed a satisfaction of judgment and withdrew the motion to compel.

The lawyer did not, however, inform the debtor that a mistake had been made, a satisfaction of judgment had been filed, or the lawyer's file was thereupon closed.

There was no apology, either.

The lawyer violated several Rules of Professional Conduct (MRPC).

Minnesota Rule of Professional Conduct 3.1 provides in pertinent part: A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous,

which includes a good faith argument for an extension, modification or reversal of existing law.

The debt had been paid in full. There was no legal or factual basis for the lawyer to continue to assert that the debtor owed the lawyer's client money.

The lawyer's continued collection efforts thereby violated Rule 3.1, MRPC.

The bringing of frivolous claims prejudices the administration of justice and the lawyer also violated Rule 8.4(d), MRPC.

Rule 1.1, MRPC, provides:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Reading one's own correspondence, particularly that less than one page long, and reviewing the file to ensure a valid claim still exists, do not constitute an unreasonable level of thoroughness to expect from a lawyer on any case.

During the disciplinary investigation, the lawyer suggested that he did not read the letter which stated that the balance the debtor owed was one cent and did not review the file because he has systems in place designed to detect when a one cent balance occurs or a debt is paid in full, and he is a busy lawyer whose practice largely involves routine "forms" such as those used in this matter.

Systems and software are great, but cannot substitute completely for a lawyer's work and judgment.