

Avoiding ethics complaints

by

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Annually we receive one complaint for every 25 lawyers in the state, and most complaints do not result in discipline. Those are good odds. And there is much you can do to further reduce your chance of receiving a complaint and, if you do receive a complaint, of being disciplined.

Fundamentals matter

The most violated rules are some of the most straightforward, and in theory among the easiest to follow. Rule 1.3, Minnesota Rules of Professional Conduct (MRPC), and Rule 1.4, MRPC, are frequently violated. Do you know what they cover? Answer: diligence (Rule 1.3) and communication (Rule 1.4). Good customer service in the legal profession, as in any service industry, goes a long way, but sometimes lawyers fall short. Lawyers have a professional obligation to control their workload so that each matter can be handled diligently. No professional shortcoming is more widely resented by our clients than procrastination. It often takes a long time to get legal matters resolved, a frustrating fact for clients. Add to that timeline the non-diligence of counsel and complaints are the natural result. Do yourself a favor and pick up that file or that matter you have been putting off, and work on it. You will feel better, and you will be reducing your exposure to a complaint.

Lawyers are known as skilled communicators, yet more lawyers than you would think struggle to communicate effectively with their clients. Too often we see lack of clarity in the scope of representation, or even regarding who is and who is not the client. This lack of communication can continue throughout the representation. It is not enough to promptly return calls when your client reaches out to you—although that is required; your duty of communication obliges you to keep the client reasonably informed about the status of the matter: It is on you. You also must discuss the means by which the client's objectives are to be accomplished. Prompt billing and clear communication about fees and expenses as they occur are pivotal to aligning your work with the client's objectives. Periodically taking time to make sure you and your client are on the same page throughout the course of the representation is always worth the

effort and goes a long way toward a satisfactory representation, no matter the end result.

Effective communication starts at the retention stage. Every engagement should have a written fee agreement, signed or acknowledged by the client, that at a minimum sets forth the scope of the representation and the basis of your fee. Some forms of engagement, such as contingency representation, require a written fee agreement signed by the client. Even when it's not required by the rules, you should prepare one for your own protection, and to limit disputes with your clients. Review your standard fee agreements frequently to confirm compliance with the ethics rules and resist the urge to overreach!

Fee agreement errors follow close behind diligence and communication among the most frequently violated rules. If I've said it once, I've said it a thousand times—no fee is earned upon receipt and no advance fee is nonrefundable. Scrub those phrases from your vocabulary—and fee agreements—and read Rule 1.5, MRPC, in its entirety. Also, do yourself a favor and treat fee disputes with your client in a fair and equitable manner. While the Office does not investigate fee disputes only (unless an unreasonable fee is involved), fee disputes often reveal other ethics violations that may not have risen to the level of a complaint if the fee concerns had been handled promptly and equitably as a first resort. You are certainly entitled to be paid for your services, but failing to promptly address fee concerns fairly can be shortsighted.

Candor and honesty matter

I continue to be surprised at how understanding and forgiving clients can be, and I wish that every lawyer kept this in mind. Clients understand that mistakes happen, and they appreciate your candor in addressing those mistakes. And though they might not like it initially, most come to appreciate your candid and unvarnished advice. Clients also are generally okay when you say you don't know the answer. Clients understand when you tell them something else has come up and their matter has been delayed. Clients do not like to start over with new lawyers.

It will not surprise you to learn that no client is understanding when you try to dodge responsibility or obfuscate the facts in lieu of acknowledging any of the foregoing. This is also true for the Court and communications with this Office. Some lawyers cannot resist the urge to "lawyer" or massage the facts. Partially true but misleading statements, or omissions, can be the equivalent of affirmative false statements. As they say, the cover-up is often worse than the crime. You will always be

better off when you choose candor and honesty, no matter how humbling or uncomfortable it may be to do so.

You matter

It has been a rough 12 months, and although there is much hope in 2021, challenges remain. This morning I saw a press report that another Kentucky lawyer died by suicide in 2021. In January, four Kentucky lawyers died by suicide in three weeks, prompting the state bar president to issue a statement offering resources and calling upon all members of the profession to lift up others when they could.

I worry about the members of our profession a lot, and I worry about lawyers facing discipline. I also take very seriously my responsibility to enforce the ethics rules, and misconduct has consequences. I do not see these statements as contradictory. This morning I received a letter from a lawyer who was disbarred a few years ago for client theft. This lawyer wrote in order to begin to address his Client Security Board obligation. He reported that he has been sober for a few years now (we knew something was up, but he did not raise substance use in response to misconduct charges), and that he has slowly been putting his life back together. I am very glad he received help, and I'm glad the Client Security Board was there to reimburse his clients.

Help is available, but it can be very hard to reach for it. Make sure you check in with yourself and others. There is no doubt but that we will continue to feel the effects of the last year for the foreseeable future, to say nothing of the other well-documented challenges that abound in the profession.

Conclusion

Sometimes complaints are inevitable, but much lies within your control. Focusing on a few fundamentals goes a long way toward mitigating risk. We often give this advice to our clients, and you may be surprised to find that it holds true in your practice as well. Do everything you can to work your files and matters diligently; prioritize communications with your client; familiarize yourself with the fee agreements rules and follow them; approach everything with the upmost honesty and candor, most particularly when it is tempting not to do so; and don't forget to check in with yourself and those you work with closely. And, remember, we are available to answer your ethics questions: 651-296-3952.