

Communication, diligence, and client expectations

by

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Email and cell phones are amazing tools—but if you practiced before they became prevalent, you know the tremendous impact, both positive and negative, they have had on the practice of law. A recently leaked presentation slide from an internal associate training at the law firm of Paul Hastings has again sparked conversation on this topic.

The slide describes some “non-negotiables” for junior associates at an AmLaw 20 firm: “You are online 24/7. No exceptions, no excuses.” “Clients expect everything to be done perfectly and delivered yesterday.” Reactions to the “non-negotiables” have been all over the map, with the firm saying the slide did not represent the views of the firm or its partners, some decrying the expectations as “horrible,” and most others—including, I wager, a large percentage of lawyers—merely shrugging.

While it might not surprise anyone that expectations are high at a large firm where hourly rates (and annual salaries) are significant, less attention is given to how prevalent these same notions are for solo and small firm lawyers or government lawyers. My brother is a solo practitioner (plaintiff’s personal injury) who works all the time and has clients who text at all hours and every day, week or weekend. I know many government lawyers who have demanding clients and large caseloads. Many in-house counsel have more work than they can handle and client representatives in multiple time zones. The “non-negotiables” are a reality for more lawyers than just associates in Big Law.

I have no solutions, unfortunately. But I thought it might be helpful to look at how the ethical requirements of communication and diligence fit into this conversation.

Communication

Do the ethics rules require you to be accessible to your clients 24/7? Of course not. The level of customer service expected by your employer or your client is one thing. Your ethical duty of communication, measured in terms of promptness and reasonableness, is another. Rule 1.4, Minnesota Rules of Professional Responsibility (MRPC), sets out the ethical standards for communication. You must:

- promptly inform the client of any decision or circumstance where their informed consent is needed;
- reasonably consult with the client about the means to accomplish the client's objectives;
- keep the client reasonably informed of the matter's status;
- promptly comply with reasonable requests for information;
- consult with the client regarding any ethical limitations impacting the representation; and
- explain the matter to the extent reasonably necessary for the client to make informed decisions.

When used in the rules, "reasonable" means the "conduct of a reasonably prudent and competent lawyer." (Rule 1.0(i), MRPC.) *Prompt* is not defined in the rules, but dictionary definitions frequently use the synonym "quick." The comments to the rule provide some additional context, noting that if a prompt response is not feasible, someone should acknowledge the request and advise when a response will be provided. (Comment [4].) The comment also advises that regular communication with a client will help to minimize client requests.

Nowhere in the rule will you find the word *immediate*, even though it might feel that way with so many instantaneous forms of communication available. Good customer service and the ethics rules align when you approach client communications thoughtfully. Clients like regular updates—including the news that nothing is new—and no one likes surprises or last-minute fire drills, so anticipating the timing of known events, and planning accordingly, goes a long way to ensuring good communications.

Clients also like to know what they can expect from you, so you may have more power to set and manage expectations than you think. Explain typical response times or communication timelines at the onset of the engagement, particularly if you represent individuals. Acknowledge communications even if you cannot respond, and provide an estimate of when you can respond. If you cannot get to it and you have

staff, delegate the outreach. Bill regularly. Bills generally communicate a lot of information. You know all of this, but it is easier said than done with so much coming at you.

Time and again, we see lawyers who have the best of intentions but fail to meet these requirements because so much is on their plate. Remember, you are probably a lawyer because you are good at problem-solving. Embrace this challenge. When you keep the ethical requirements in mind, it helps to clarify when you are at risk of failing in your ethical duty of communication. While you may not always be able to provide the level of customer service you would like, make sure that you keep in mind the ethical requirements regarding communication.

Diligence

Clients often find legal timelines mysterious. And frustrating. It's not only big firm clients who expect results yesterday. So much of our culture revolves around immediacy. Your duty under Rule 1.3, MRPC, regarding timeliness is to "act with reasonable diligence and promptness in representing a client." Importantly, as the comment states, "A lawyer's workload must be controlled so that each matter can be handled competently."

This is perhaps one of the biggest challenges the profession faces. No one wants to turn away work; you don't always know when more work will come your way. Or sometimes you are unable to say no because you are not in private practice. Sometimes you have managed your workload well but the unpredictable nature of life and legal matters still throws a wrench in your plans. Probably nothing keeps more lawyers up at night than the number of things they have to do and the equally frustrating feeling that there is never enough time to complete what needs to be done.

Again, you know this—but even knowing that you have an ethical duty to act with diligence may not be sufficient to compel you to make changes or take action, particularly if you are one of many in the profession who suffer from depression or substance use disorders that interfere with the ability to get work done. (Remember our friends at Minnesota Lawyers Concerned for Lawyers—www.mnlcl.org—are there to talk and to help you find additional help if you need it.) It is sometimes hard to speak out and ask for help, or maybe you do not know who to turn to for help. The diligence rule is there, and enforced, to ensure that we do not let these other circumstances, although understandable, trump the interests of our clients.

A cautionary tale

In March 2023, the Minnesota Supreme Court suspended former city attorney Elizabeth Bloomquist from the practice of law for 30 days. As city attorney, Bloomquist failed to act diligently to make several misdemeanor charging decisions, allowing the statute of limitations to run on alleged criminal conduct in many cases, and failed to comply with victim notification statutes relating to those lapsed claims.

Bloomquist was arguably in an untenable position due to no-longer-sufficient levels of support personnel to allow her to get her work done on a timely basis. Although Bloomquist raised the issue of lack of support with the city, she also agreed that she likely could have done more. Ultimately, while recognizing the challenges faced by attorneys employed by government entities, the Court was unpersuaded that her lack of control over her own caseload warranted substantial mitigation under the facts presented. In representing a client, whether private or public, the duty to act with reasonable diligence and promptness should be foremost on your mind. When you cannot do so, keep raising the issue or take the steps necessary to withdraw ethically.

Conclusion

For as long as discipline has been imposed on lawyers, communication and diligence have been chief among the most violated rules. Objectively, they are easy enough to comply with. On the other hand, they can be challenging to satisfy for so many reasons. Because the obligations are so closely tied to the trust and confidence with which our clients and the public regard us, prioritizing your ethical duties of communication and diligence—notwithstanding the challenges that come your way, but also without succumbing to the pressure to act immediately—will serve you and the profession well.