

## MANAGING EXPECTATIONS

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When I was in law school, I had a remedies professor who advocated what he called “a yellow legal pad” approach to new clients. (As a total aside, do you remember yellow legal-sized pads? Ah, how things have changed.) The idea was that at an initial consultation with a prospective client, the lawyer would listen to the client’s recitation of what had happened, taking occasional notes on the pad; ascertain exactly what the client’s goal was and thus what relief the client truly was seeking; then think through all the legal options and offer possible remedies to the client’s legal problem.

As a matter of lawyer professionalism, an integral part of an initial meeting with a prospective client ought to be setting out the reasonable expectations that each side should bring to the representation. What is the client expected to do? Likely pay their fees on time; provide requested information (for interrogatories, bankruptcy schedules); be available for deposition or meetings, etc.

What is the lawyer expected to do? The answer to this question may well depend on which of the parties—lawyer or client—is asked. The lawyer may respond, based in part upon the obligations imposed by the Minnesota Rules of Professional Conduct (MRPC), that among her obligations is to provide competent representation (meaning knowledge, skill, thoroughness and preparation reasonably necessary for the representation) and reasonably diligent representation, to maintain reasonable communication with the client, charge reasonable fees, and provide appropriate accountings of client funds and property.<sup>Ftn1</sup> Ironically, the client may in fact give a similar response; the “catch” is that the lawyer and the client may have differing ideas of what’s “reasonable.”

For purposes of imposing lawyer discipline, Rule 1.0(i), MRPC, defines “reasonable” or “reasonably,” when used in relation to conduct by the lawyer, to mean the conduct of a reasonably prudent and competent lawyer. While not an overly helpful definition, this plainly views the term from a lawyer’s perspective and not from that of a client.

## Avoiding Complaints

This distinction is of little benefit to a lawyer who wishes to avoid having a complaint filed against him. Most complaints are avoidable and many lawyers never have a complaint filed against them, even lawyers with busy practices in areas such as family law, criminal defense, or immigration where emotions can run high and misunderstandings can easily occur. While the outcome of a disciplinary complaint will be based on the language and definitions contained in the MRPC, complaints are initiated by clients using their own perception of what the standards for lawyer conduct are or should be. And the client's perception and expectations may be wholly *unreasonable*. It is therefore incumbent upon the prudent attorney to: 1) not commit any misconduct; and, 2) try to manage client expectations, a process that should begin at that initial consultation with the client.

Rule 2.1, MRPC (Advisor), requires an attorney to exercise independent professional judgment and render candid advice. An honest depiction of how the legal process works and the amount of time involved is important, as is an honest assessment of the likelihood of achieving the client's objectives. Overly optimistic portrayals do no one any service. Perhaps the first opportunity to fulfill the intent of this rule is in establishing "reasonable" expectations for the client, best done at that very first meeting or contact:

- **As to accepting a case:** "Screening" may be the single most important factor in avoiding client complaints. Is this a case, or the type of case, that the lawyer is qualified to handle—qualified in terms of expertise, experience, time commitment, or just simple interest? Is this a client that you wish to work for? There may be legitimate, nondiscriminatory reasons to not accept a particular client based upon the nature of their claim, their reasons for seeking a remedy, or the nature of the remedy they desire. (Are they motivated by a desire to punish someone regardless of the merits?) Once you accept a client and their case, the client may reasonably assume you are prepared on all levels to zealously represent them. The case from which you later seek to withdraw certainly may be the case that generates a complaint.
- **As to fees:** How much will you charge? Will there be a written fee agreement prepared and signed? There almost always should be; probably no other single item will help limit client misunderstandings, unhappiness, and complaints. Will fees be charged per hour or as a percentage fee contingent upon a particular outcome? Is there a minimum billing period (for example, six minutes)? Will the client be charged for costs if there is litigation? Will payment of those costs be taken out of any verdict or settlement?

- **As to communication:** Will the client be informed whenever there is any important activity on their matter? Will the client be copied on all correspondence? Will the client be charged for phone calls (especially if initiated by the client)? How promptly should a client expect a return phone call from the lawyer if she's not available? If the lawyer is not available, will someone else in the lawyer's office, such as a paralegal, return a phone call, and again, how promptly?
- **As to diligence:** Again, a realistic indication of how long the legal process takes can go a long way to minimize a client's anxiety over perceived delays. Accurately describe the steps in the litigation process and your own approach to seeking or agreeing to continuances—a frequent cause of misunderstanding. That's not to condone telling a client that something will take twice as long as it really should, just to cover for the lawyer's own procrastination tendencies and thus dampen expectations. But conversely, an overly simplistic "that shouldn't take very long" approach only invites unhappiness.

### **Honesty**

Managing client expectations is an ongoing process throughout a representation, not just at the initial stages. In the end, "honesty is the best policy" is a wise approach. An unavoidable delay in the process may create anxiety for the client and increased demands upon the attorney. If you have promised to return phone calls within 24 hours, then are unable always to fulfill that promise, be big enough to apologize and try to do better. If there is a billing error, admit it and promptly make amends. "My fault" and "I'm sorry" are useful phrases to keep in mind for occasional use. Clients generally want to like their lawyers and want to be happy with the level of service provided—so it doesn't take a lot of "bedside manner" in order to make that occur. As noted above, many successful lawyers never receive a client complaint—they must be doing some things right.

### **Notes**

<sup>1</sup> See Rules 1.1, 1.3, 1.4, 1.5 and 1.15, MRPC.