

Three New Year's Resolutions to Make — and Keep

by

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Regardless of whether you're the sort of person who normally makes New Year's resolutions, there are a few you could make this new year that will improve your law practice and reduce the likelihood that you will find yourself on the receiving end of an ethics complaint.

Many of the complaints the Director's Office receives are a product of a remarkably similar set of facts. The lawyer agrees, perhaps against his or her better judgment, to take on a "difficult" case. The case is difficult not necessarily because it involves complex legal or factual issues, but rather because it's outside the lawyer's normal practice area or the client is particularly challenging. Examples include the "simple" personal injury case that the lawyer agrees to take for a friend even though the lawyer is primarily a transactional lawyer, or the client the lawyer agrees to represent despite the fact that the client fired his first two lawyers in disputes over unpaid fees.

Because the case is difficult there is always something else on the lawyer's desk that seems to take precedence. Soon the file begins to languish. Because the file has been languishing, there is no progress to report to the client. Because there is no progress to report to the client, the lawyer isn't communicating with the client. If things really get out of control, the lawyer begins avoiding calls from the client, or even worse, lying to the client about what's been done with the case.

There are three simple resolutions you can make this year that can help you avoid this situation.

Resolution No. 1 I will call or write the client I haven't communicated with recently.

The Minnesota Rules of Professional Conduct require you to keep your client reasonably informed about the status of the representation and to promptly comply with reasonable requests for information.

The most common complaint to the director's office is about inadequate communication. Most clients recognize that you are human and are willing to forgive many minor failings. The thing most likely to drive clients to the keyboard to draft a letter of complaint, however, is the perception that their lawyer is ignoring them. If you haven't updated the client in a while, call or write. Even if the only information you have is that you haven't worked on the file recently (see resolution no. 2) that communication will let the client know that you haven't abandoned him or her.

Resolution No. 2 I will set aside a few hours in the next week to decide what to do with that case that I haven't touched in months.

As mentioned previously, frequently the reason the lawyer hasn't been in contact with the client is that the lawyer has nothing to report, and the reason the lawyer has nothing to report is that he or she just doesn't know what to do with the case. Next to communication issues, the most common cause for client complaints is failure to diligently pursue a representation.

Under the rules of professional conduct, a lawyer is required to act with reasonable diligence and promptness in representing a client. If the representation involves an area of law outside of your normal practice area, talk to a lawyer who practices in that area. Take a few minutes to review the file and decide, "Is this a file that I can handle and if so, what do I need to do next?"

Be specific in the actions you will take next and set a timetable for those actions. If you reach the conclusion that this is not a file that you can successfully handle, then you need to think about resolution no. 3.

Resolution No. 3 I will withdraw from the case that I just don't have the time, the competency, or the inspiration to handle.

Occasionally lawyers will (with the benefit of hindsight) state that they should have just withdrawn from the case that ultimately resulted in their being disciplined. While no one likes to feel as though they've failed their client, sometimes you're doing your client a greater disservice by hanging on to a case from which you should be withdrawing.

The rules of professional conduct allow withdrawal from a representation if withdrawal can be accomplished without material adverse effect on the interests of the client. If you've reached the conclusion that the continuation of the representation is simply not feasible, you must take steps reasonably practicable to protect the client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fees or expenses that have not been earned or incurred.

While these are three relatively easy resolutions to keep, they are resolutions that will help a lawyer head off complaints of unprofessional conduct.