

When You're Sick (And Tired) Of It!

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It may be fair to say that all lawyers grow weary of certain files at certain times, but what are your ethical obligations if you literally become too fatigued or ill to handle your caseload? The subject was addressed in a recently issued private admonition.

The Admonition

A family law attorney agreed to prepare a marital termination agreement (MTA) and obtain a judgment based upon a final memorandum of agreement which the couple had previously prepared. After agreeing to the representation, the attorney had a number of significant events occur in her life, including a fairly serious injury that occurred while she was vacationing. The injury kept the lawyer away from her practice for a few weeks, and later required the lawyer to work only part time for a number of weeks. The lawyer also left her former law firm and set up her own law office between the time she was retained and the time she was injured.

The attorney wrote to the client to inform her of the injury and to thank her for her continuing patience and understanding. Later, the attorney wrote a letter stating that she would finish the MTA within the next few weeks.

The attorney did not complete the MTA as promised. In fact, it took the attorney approximately seven months from when she was retained to prepare the first draft of the MTA and stipulated findings.

The Professional Obligation

What ethical rule applies to this situation? Certainly Rule 1.3, Minnesota Rules of Professional Conduct (MRPC), applies. That rule states that: "A lawyer shall act with reasonable diligence and promptness in representing a client."

Here, the seven-month delay, even in light of the illness and other events the attorney experienced, was not reasonable. The completion of the tasks involved in the representation basically involved a ministerial task, and the client experienced anxiety as a result of the delay. Thus, an admonition was appropriate.

What Could Have Been Done

What else could have been done in this situation? If you are too tired or sick (or both) to handle your clients' legal matters for them, you may not simply expect your clients to be patient and await your recovery. Rather, the attorney has an obligation to work diligently on the file under Rule 1.3 and to keep the client reasonably informed about the status of the matter under Rule 1.4. The duty of communication necessarily includes the disclosure of an attorney's inability to handle a client's case due to health or other reasons.

Here, the attorney could have sent a first letter explaining the injury and the possible delay involved. After it became clear that the attorney could not attend to the matter promptly, the attorney could have offered the client the option of either waiting or receiving a refund of the fees already paid so that the client could hire another attorney. Both options would have kept the client reasonably informed as to the status of the matter, and provided sufficient information to permit the client to make informed decisions regarding the representation.

The comment to Rule 1.3 provides that, "A lawyer's workload should be controlled so that each matter can be handled adequately," but also refers to termination of the relationship as provided in Rule 1.16. Rule 1.16, which generally relates to withdrawal or termination of representation, also specifically addresses withdrawal by an attorney if illness or mental condition precludes the attorney from diligently pursuing the client's case.

In fact, the rule states that an attorney "shall withdraw" from the representation of a client if "the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client." Rule 1.16(a)(2), MRPC.

Yet another alternative would have been to obtain the client's consent to enlist another attorney's assistance on the file. While this solution may not be as practical, it too satisfies the requirement of keeping the client informed on the status of the case under Rule 1.4, and attending to the matter diligently under Rule 1.3.

The rules contemplate that lawyers, just as everyone else, may encounter physical, mental or other situational difficulties that may affect the lawyer's life and practice. If and when these issues arise, it is necessary to evaluate the alternatives which will fulfill the clients' objectives and comply with the professional standards.