

By MARTIN COLE

Managing Expectations

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),



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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.¹ 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.

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.

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 corre-

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spondence? 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

¹ See Rules 1.1, 1.3, 1.4, 1.5 and 1.15, MRPC.



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Combating Domestic Abuse

Seasoned and new attorneys alike can find valuable experience with Minneapolis-based Tubman's volunteer attorney programs while protecting survivors of abuse from further violence.

Tubman has been providing family law attorneys various ways of volunteering their time since 2007. Tubman receives requests for assistance from thousands of low-income individuals, most of whom are victims of domestic abuse, every year.

Tubman has also been providing pro bono representation in protective order cases since the mid 1990s. Attorneys who volunteer with the Safety Project are trained to represent clients in Order for Protection and Harassment Restraining Order proceedings in Hennepin and Ramsey counties. Attorneys gain valuable trial experience while clients get help preparing their case. Tubman currently partners with over 15 Twin Cities area law firms in this project.

Receiving legal services is the strongest factor in decreasing domestic violence, yet it is the most expensive service domestic violence victims need and, therefore, the one the fewest are able to access.

Opportunities are available for new and experienced family law attorneys as well as attorneys of all experience levels and backgrounds who complete four hours of training through Tubman's Safety Project. Volunteer attorneys receive professional liability insurance coverage for pro bono cases through Tubman. The next training for the Safety Project will be in the fall of 2012 at Lindquist & Vennum in Minneapolis. For more information or to volunteer, contact L. Michelle Thompson at mthompson@tubman.org or (612) 870-2418.

Tubman's legal services programs are supported by Greater Twin Cities United Way, Hennepin County Bar Foundation, Legal Services Advisory Committee, Minnesota State Bar Foundation, Ramsey County Bar Foundation, and Thomson Reuters.

Pro Bono Opportunity of the Month Immigration - Gender Change



A client of St. Cloud Area Legal Services who underwent gender reassignment surgery (from female to male) and is a refugee who has not yet completed his green card application needs assistance applying for a new work authorization document and requesting that his sex and name be changed on his new work authorization.

When the client went in to complete his medical exam for his green card application, he was informed by the civil surgeon that without a valid photo ID they could not provide the exam form. He has tried without success to get a Minnesota Identification Card, due to not having the appropriate identity documents. He does not have other ID, having lost his employment authorization card, which lists him as female and does not have the correct name. He has petitioned the state for a variance (saying he doesn't have the documents needed) and has been denied twice.

Contact: Jessica Nault, jnault@mylegalaid.org or by phone at (320) 257-4857. Further information about this and other pro bono opportunities can be found online at www.projusticemn.org/volunteer.

Answering Collection Lawsuits Statewide

When James was served with a Summons and Complaint for \$8,500, he immediately saw that the plaintiff was someone he'd never heard of and that the Court Case Number was blank. When he called the court, the clerk had no record of the suit. Happy that he had not fallen for a scam, James tossed the Summons and Complaint. A month later, he went to pay his rent only to find that his bank account was frozen.

This situation is not uncommon. As reported by the *Minneapolis Star Tribune*, defendants answered *less than ten percent* of debt collection cases resulting in more than 51,000 default judgments for debt collectors in 2008. Service with legal process is intimidating and, because a lawsuit in Minnesota is commenced upon service rather than filing with the court, defendants can't confirm with the court that a lawsuit has been started. Accordingly, defendants are loath to respond to unfiled complaints from unfamiliar debt buyers claiming old, unrecognizable debt, due to the added interest and fees.

The consequences are severe. When a defendant fails to answer within 20 days, the debt-buyer plaintiff moves for default judgment. Then, without having offered any proof of their claims, they begin garnishment pursuant to Minn. Stat. § 571.71 (2) (2011).

Volunteer Lawyers Network (VLN) volunteer attorneys have been drafting answers for Hennepin County defendants for years. Starting last year, VLN volunteers began drafting answers for collection lawsuits across the state. This service, called Legal Service Line, promotes cases being heard on the merits, gives defendants time to secure local counsel, and provides access to justice to isolated parts of the state.

A low-income defendant calling VLN or the Minnesota state courts for help is first scheduled for a phone session with a volunteer attorney. The defendant is then emailed instructions to (a) complete an online questionnaire and then (b) fax or scan the summons and complaint to the attorney. The attorney reviews this information and drafts an answer, typically using the Minnesota courts answer form.

During the appointment, the attorney gives advice, completes the answer and, if applicable, advises the client to write a cover letter alerting the plaintiff of the client's collection-proof status. The volunteer attorney then emails the answer to the client with instructions on how to receive VLN's help with service of process if the client chooses.

For further information contact Volunteer Lawyers Network at vlm@hcba.org.



Committee 36 Celebrates Its First Year!

Thank you.

Through the work of **Committee 36**, the MSBA connected 36 new members of the profession with supportive members of the Minnesota legal community (coaches), provided resources, educational and social programming, and assisted new graduates with the transition into the profession for the benefit of the graduates and the profession as a whole.

Thank you to the following coaches who generously volunteered their time and expertise to **Committee 36** this past year. The program would not be a success without you!

KENDRA BRODIN
Committee 36 Chairperson
University of St. Thomas School of Law

BRENT ROUTMAN
MSBA President 2011-2012
Merchant & Gould PC

Committee 36 is expanding and needs additional coaches. For more information or to volunteer visit:
www.mnbar.org/committees/committee36



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