

# Attorney Ethics

## Considerations for the Solo

by Brian J. Fruehling

For many newly minted attorneys, or those attorneys who have left large firms and recently hung out their own shingle, dealing directly with clients can present certain challenges. The newly solo or small-firm practitioner must be vigilant in complying with attorney ethics requirements, and would be well served to spend some time reviewing the Rules of Professional Conduct (RPCs). Particular attention should be given to the rules governing client communications.

**A**t large law firms, often there is a buffer or bureaucracy separating the young attorney from the client. The large law firm typically has a partner in charge of a 'client matter.' In fact, in some instances the associate attorney never meets or even speaks with the client. The associate might report to a junior partner, who in turn reports to a senior partner, for example. In a large firm, therefore, the responsibility for maintaining client communication and satisfaction rests not with the associate attorney but with those higher up in the law firm.

Associate attorneys who only remain at large firms for one or two years, probably will not have had the opportunity to master the skill of dealing directly with clients in a lawyerly manner. As a result, the associate attorney is likely not well equipped to handle client needs and demands. Similarly, the recently admitted solo practitioner may lack experience in dealing directly with clients. Therefore, inexperienced newly solo or small-firm attorneys would be well advised to seek mentoring from seasoned practitioners, whether it be in the form of attending seminars or simply contacting their senior brethren by telephone, or through other informal settings, to discuss office concerns.

All attorneys, regardless of their level of experience, must be aware of and comply with the Rules of Professional Responsibility governing the bar of New Jersey, and should read and periodically review the RPCs. Lawyers are presumed to know the RPCs, advisory opinions issued by the New Jersey Supreme Court's Committee on Advisory Opinions, ethics opinions applying the RPCs, and the Rules of Court. Intent to violate an ethics rule, except for very limited circumstances, is not a prerequisite to the finding of an ethics breach. In other words, ignorance of the RPCs is not a defense to an ethics violation.

### Client Communication Under RPC 1.4

Of particular importance in the handling of client communications is RPC 1.4, which requires all attorneys to: (a) fully inform a prospective client of how, when and where the client may communicate with the lawyer; (b) keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; (c) explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; and (d) when a lawyer knows a client expects assistance not permitted by the Rules of Professional Conduct or other law, advise the client of the relevant limitations on the lawyer's conduct.

Compliance with RPC 1.4 by the solo practitioner is not just an ethics requirement; it can be an excellent tool in creating a rewarding relationship with clients. As contemplated by RPC 1.4, setting reasonable goals and expectations with the client from the outset will pay dividends in the long haul.

At the initial client conference, after assessing the facts of the case and determining whether a valid cause of action exists, the attorney should clearly and openly "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."<sup>1</sup> The attorney should then educate the client about the 'reasonable expectations' of the case.

The following are some tips to keep the assessment and

objectives of the representation on point and within the understanding of the client:

- Educate the client generally about the law as it applies to the facts of his or her case, even if the client is savvy and appears to already understand the process.
- Explain the attorney's role in the client matter, so the client's expectations of the attorney's representation in the matter are reasonable, including the billing structure, and the manner and expected frequency of communications between attorney and client.
- Explain the process, including the likely timeframe, legal procedures, motions expected, and anticipated limitations on what the attorney can achieve in the case. Do not sugar-coat the matter or over-promise what can be gained by virtue of the lawsuit.

Overall, good communications will serve the solo practitioner well in running a successful law practice. Clients expect their attorneys to be very responsive to telephone calls and emails, and otherwise require constant communication and updates about their legal matters. As long as the client's requests for information are reasonable, the lawyer is obligated to keep the lines of communication open and respond to the client's requests according to RPC 1.4.

### Getting it in Writing

For clients new to the firm, a written legal services agreement must be made, as required under RPC 1.5(b). The solo practitioner should explain to the client in the legal services agreement, exactly what services the attorney will perform, terms of payment, treatment of retainer funds, and the client's responsibilities to the attorney during the representation period. If the matter is a contingency fee case, compliance with Rule 1:21-7 is also mandatory. All retainers in matrimonial

matters must be in writing, as required by Rule 5:3-5(a).

In any event, the fee agreement must be fair and, "may not provide for an unreasonable fee or any other unreasonable waiver of the client's rights."<sup>2</sup> Handling of client retainer funds must be treated in accordance with the terms of the legal services agreement.<sup>3</sup> The retainer funds must be earned before they are paid over to the attorney,<sup>4</sup> and RPC 1.16(d) requires that upon termination of representation the lawyer must refund any advance payment of fees that have not been earned.

Within the legal services agreement, the solo practitioner should advise the client when he or she will receive updates on their billing status. In certain matters, it would be appropriate for the attorney to provide monthly statements of account, keeping the client constantly aware of their financial status with the attorney. If a client is regularly updated on their account, the element of surprise and dissatisfaction with progress on their case can be averted. A client who regularly receives detailed legal invoices from his or her attorney will not only be aware of the costs associated with the representation, but will have (by virtue of the detailed invoice) a written report of everything the attorney has done.

In the event a client makes excessive and unreasonable demands for information about their file, the attorney should confront the client about the problem without delay. Attorneys will rarely have to address this issue (*e.g.*, excessive or daily calls about a case that is not at the trial level, for example) if they initially explain the frequency with which clients should expect to be updated. If the client is regularly updated, the instances of client unhappiness will likely be minimal.

The client's overall satisfaction with the attorney is often not based on the outcome of the matter, but on whether he or she believes the attorney has worked hard on the case and kept the

client's best interests as the focal point of the representation. Typically, the client will be satisfied if he or she believes in the attorney's commitment to the case and if the attorney has been updating the client on a regular basis, thereby alleviating any surprises or problems the client was not expecting. This all leads back to great communications between attorney and client.

### Conclusion

Year after year, the majority of ethics complaints are based on attorneys' failing to adequately communicate with clients. A majority of these ethics grievances are filed against solo practitioners or small law firms, possibly because solo practitioners and small firms often engage in the type of practice areas ripe for complaints, such as divorce, real estate and general practice work.

Fortunately, there is a ready solution for the newly solo practitioner and small-firm lawyer: Complying with RPC 1.4, educating the client about their legal position, managing the client's expectations about legal proceedings and potential outcomes, and providing the client with a sufficiently detailed legal services agreement whereby the client is updated regularly, will serve both the attorney and the client well. ♪

### Endnotes

1. RPC 1.4(c).
2. *Cohen v. Radio-Electronics Officers*, 146 N.J. 140,156 (1996).
3. *In re Stern*, 92 N.J. 611, 619 (1983); *In re Youmans*, 118 N.J. 622, 636 (1990).
4. *In re Spagnoli*, 115 N.J. 504, 516 (1989).

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