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Revisited: "From A Client's Perspective: A Look at the Code of Professional Responsibility of the Maritime Law Association of the United States"

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Introduction

At the May 1999 spring meeting of the Maritime Law Association a "first visit" was made to the MLA's Code of Professional Responsibility ("From a Client's Perspective: A Look at the Code of Professional Responsibility"). This paper is a "Revisit." Some of the topics addressed in May 1999 are repeated while others are updated (particularly the discussion of Rules 1.2 and 1.4 of the Model Rules of Professional Conduct of the American Bar Association which in 2002 underwent significant amendment), and this paper uses as a source document " '. . . . In the Spirit of Public Service:' A Blueprint for the Rekindling of Lawyer Professionalism," a report of the Commission on Professionalism of the American Bar Association (1986) the content of which the earlier "visit" did not consider.

After discussing factors that the ABA's Commission on Professionalism believed caused the public to "view lawyers, at best, as being of uneven character and quality," the Commission's report (at p.3) states the "primary question" which the Commission strives to answer: " What, if anything, can be done to improve both the reality and the perception of lawyer professionalism." This paper attempts to address that question, from a client's point of view, with the focus being the MLA's Code of Professional Responsibility (hereinafter the "Code"). In addressing that question this paper considers what attributes make the practice of law not simply an "occupation" but a "profession," highlights elements of the MLA's Code of particular concern to clients and then considers those elements in the context of other codes and particularly the ABA's Model Code of Professional Conduct.

The Practice as Profession and the MLA Code

Definitions of the practice of law as a "profession" abound, but from a client's perspective a particularly satisfying definition comes from Dr. Eliot Friedson, a non-lawyer Sociologist with a national reputation. Dr. Friedson's premise is that the practice of law is

an occupation "whose members have special privileges, such as exclusive licensing, that are justified by [certain] assumptions:"[1]

> 1. The practice of law "requires substantial intellectual training and the use of complex judgments;"
> 2. Because the "client cannot adequately evaluate the quality of the service, they must trust those they consult;"
> 3. "The client's trust presupposes that the practitioner's self-interest is over balanced by devotion to serving both the client's interest and the public good;"
> 4. "The occupation is self-regulating – organized (so as) to assure the public and the courts that its members are competent, do not violate their client's trust, and transcend their own self-interest."

Dr. Friedson's definition could almost be described as "client-centric" - the client's role is prominent in three of his four criteria for categorizing the practice of law as a profession.

Although the MLA's Code is not "client-centric," certainly the tenets/concepts of the MLA's Code are "client-friendly":

> Paragraphs 1 and 2 concerning competent and efficient handling while simultaneously adhering to Rules and Codes of Professional Conduct.
>
> Paragraphs 3 and 4 concerning acting courteously and in a civil manner towards and keeping one's word and treating with respect and dignity colleagues, parties, witnesses and the courts, and, although not mentioned, presumably clients as well.
>
> Paragraph 5 concerning maintaining the trust of your clients.
>
> Paragraphs 6 and 7 concerning expeditiously resolving disputes and avoiding both unnecessary increase in costs and delay in litigation while simultaneously seeking an expeditious result reflecting the client's legitimate interests (and not abusing witnesses or parties and, although again not mentioned, presumably not abusing or harassing your client).
>
> Paragraphs 8 and 9 concerning actively furthering *pro bono* activities and neither misleading nor making a misrepresentation to the court and promoting the tenets of the code.

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[1] " '. . . . In the Spirit of Public Service:' A Blueprint for the Rekindling of Lawyer Professionalism," American Bar Association Commission on Professionalism (ABA, 1986), p.10.

As do you, your clients work in a relatively small tight knit international industry doing business, to some extent, based upon customs and practices established over a long period of time, and therefore your clients should find the core concepts underlying the MLA's Code of Professional Responsibility to be part of the fabric of their day to day work in the maritime industry. Because you are part of the maritime industry, when your clients first consult with you they will do so believing you will act in accord with the core concepts of the Code (using its numbering): 1. Competency and Efficiency; 2. Respect; 3. Courtesy; 4. Keeping One's Word; 5. Trust; 6. Swift Handling; 7. Expeditious Discovery; 8. *Pro bono* Activities; 9. Honesty with the Court; 10. Set a Positive Example.

From a client's perspective, of those core concepts "Trust" is of the greatest consequence.

Trust

Three of Dr. Friedson's four criteria qualifying the practice of law as a profession refer to "trust." "Trust" is found in the MLA's Code only at paragraph 5 where, as well, the only reference to "client" is found. Although the core concepts of the other paragraphs of the Code dance around "trust," I believe the writers of the Code did well to join "trust" with "client" at paragraph 5:

> I will maintain the trust of my clients by keeping them well informed and actively involved in making decisions affecting them.

Paragraph 5 of the MLA Code of Professional Conduct contains three dictates: maintain the trust of your clients, keep your client well informed and involve your client in decision making.

You are to "maintain" the trust of your clients. By using the word "maintain" the Code assumes trust exists between you and your client at the outset of the lawyer-client relationship. This stands to reason. The client makes the first move. By handing a problem or dispute or project to you, your client has put his trust in you to do all of the things you undertake to do in the other 9 paragraphs of the Code. The client trusts you to handle the matter professionally and competently. Trust is implicit in the client-lawyer relationship. As Dr. Friedson states, because the "client cannot adequately evaluate the quality of the service, they must trust those they consult."

The client trusts you, as the second part of the Code's paragraph 5 says, to keep the "client well informed." Implied is that if you keep your clients well informed then you will maintain the trust the client initially has put in you.

The third part of the Code's paragraph 5 implies that you will maintain the trust of the client by actively involving your client in "making decisions affecting your client." I believe that even if you involve your client in decision-making but do not keep your client "well-informed" then you nevertheless will not be able to maintain your client's trust. If you keep your client well informed then your client's involvement in decision making naturally will follow.

Trust – the basis for a healthy, productive and lasting lawyer-client relationship – can exist and be maintained only if the lawyer engages in complete and effective communication with the client.

Communication: Codes and Rules

What is complete and effective lawyer-client communication? Although, for example, the Disciplinary Rules of the New York Code of Professional Responsibility (the keystone of professional conduct for lawyers admitted in New York State) do not suggest that a lawyer has any obligation to communicate anything concerning the handling of the matter to the client, New York's "Statement of Client's Rights" (which every lawyer with an office in New York must post in a place visible to all clients; a copy of that Statement is attached to this paper) does suggest in general terms what a client reasonably should expect the lawyer to communicate to the client:

> 5. You are entitled to have your questions and concerns addressed in a prompt manner and to have your telephone calls returned promptly.
>
> 6. You are entitled to be kept informed as to the status of your matter and to request and receive copies of papers. You are entitled to sufficient information to allow you to participate meaningfully in the development of your matter.

Rules 1.2 and 1.4 of the American Bar Association's "Model Rules of Professional Conduct" are much more detailed than New York's "Statement of Client's Rights" and therefore better describe effective and complete lawyer-client communication. Recognizing that "poor communication is the most frequently reported source of client dissatisfaction,"[2] as part of the first comprehensive revision of the ABA's Model Rules since their adoption in 1983, in February 2002 the ABA significantly amended Model Rules 1.2 and 1.4 (and the Comments to them)[3] so that MR 1.2 and 1.4 now address much

[2] *Annotated Model Rules of Professional Conduct* (2003, Fifth Edition, ABA), page 51.

[3] Hereinafter "MR" followed by the rule number refers to individual rules of the ABA's Model Rules of Professional Conduct.

more specifically than before what is effective and complete communication between lawyer and client (amendments are shown by strike out and underlining):

Rule 1.2 Scope of Representation

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation~~, subject to paragraphs (c), (d) and (e),~~ and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to ~~accept an offer of settlement of~~ settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the ~~objectives~~ scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.[4] ~~consents after consultation~~

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but the lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

~~(e) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.~~

[4] MR 1.0(e): " 'Informed Consent' denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct."

Rule 1.4 Communication

(a) A lawyer shall ~~keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.~~
(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
(3) keep the client reasonably informed about the status of the matter;
(4) promptly comply with reasonable requests for information; and
(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Impliedly, other of the ABA's Model Rules of Professional Conduct involve communication (for example, rules dealing with fees, confidentiality of communications, conflict of interest, terminating representation, etc.).

Details, background, context and application of ABA Rules 1.2 and 1.4 can be found in the *Annotated Model Rules of Professional Conduct* (2003, Fifth Edition) published by the ABA and in at least two loose-leaf services: "The Lawyer's Manual on Professional Conduct" published by the ABA with the Bureau of National Affairs, and "The Law of Lawyering" published by Aspen Publishers.

Although 17 years old, Professor Charles Wolfram's *Modern Legal Ethics*, a practitioner's handbook published by West Publishing, is a very readable and very valuable resource. As a client I recommend it to you.

I have drawn on all of the above sources in preparing my remarks today.

The Importance of Communication between Lawyer and Client

As said earlier, communication serves to maintain trust between lawyer and client. The word "maintain" implies, and correctly so, that before the client approaches you to request representation the client already trusts you, trusts your judgment, trusts in your competence and trusts that you will keep the client informed. Complete, even overdone,

communication nearly always will ensure that the client's trust in you is maintained if not strengthened.

Communication serves to avoid disputes, to minimize concerns a client may have, and to prevent a client from distorting minor complaints into major complaints. Communication also serves to ensure your client knows the level and nature of expenses and extent of services being provided for which you expect to be paid.

As a corollary to the notion of lawyer-client communication minimizing client complaints, effective lawyer-client communication can serve to protect you from me, the client.

Not unknown is for us, clients, to ask you to represent us because *we know we are in the right* and *we know the adversary is at fault*; everything you say passes through the *we are right* filter. If you tell us something that we may not want to "remember" ("to best get your side of the story before the judge two witnesses from Norway and three from India have to be at the trial" or "your chances are no more than 15-20%" or "your recoverable damages are not $270,000 but in range of $20,00 or $30,000" or that "pages missing from the log book likely will result in an inference adverse to you"), then confirm it in writing. A Client's memory can be selective. Effective written communication can protect you from that selective memory.

Paragraph 5 of the MLA's Code of Professional Conduct (encouraging you to keep your client "well-informed and actively involved in making decisions" affecting your client) parallels the ABA's Model Rule 1.4. MR 1.4 requires a lawyer to inform the client about the status of the matter and to reasonably consult with the client so that the means to the client's objectives can be established and the client at all stages will know the status. MR 1.4 is included in codes adopted by many States and highlights an important "why" of lawyer-client communication: you are obliged to explain the matter to enable your client to make informed decisions to reach the client's objectives.

After considering two types of lawyer-client relationships, one the "Lawyers as Hired Guns" (the lawyer slavishly does the bidding of the client) and the other "Lawyers as the Master of Ship" (the lawyer controls the ebb and flow of the representation in all significant respects), Professor Wolfram concludes that a third type of lawyer-client relationship is best: the "Cooperative Model."

Because paragraph 5 of MLA's Code of Professional Conduct dictates that you keep clients not just "informed" but "well-informed" and dictates that you not just "involve" clients in decision-making affecting clients but "actively" involve clients in such decision-making, the MLA's Code of Professional Conduct rejects the "Hired Gun" and "Master of the Ship" approach to lawyer-client relationships and instead demands that you engage in

the "Cooperative" lawyer-client relationship "in which the lawyer and client assume joint responsibility for the representation" (page 156, *Modern Legal Ethics*).

From a client's perspective, I believe a significant benefit of the MLA's Code of Professional Conduct is that it requires the "Cooperative" model of lawyer-client relationship.

Knowing "when" you should communicate with your client is almost always wrapped up with your knowing the answer to "what" you should communicate to your client.

Paragraph 5 of the MLA's Code of Professional Conduct obliges you to keep your clients "well -informed." I believe this obliges you not just to inform your client of developments, issues, problems, etc., as they occur during your representation but also to periodically keep your client informed that no developments, no issues and no problems have occurred.

Informing your client that nothing has occurred provides valuable information. In response to such advice your client can do nothing or can ask you if anything can or should be done to move the matter along. A "nothing has happened" communication permits your client to report to his board or superiors or insurers or excess insurers that "nothing has happened since the last communication" evidencing to them that you and your client are up to date and not ignoring the matter.

The ABA's Model Rule 1.4 (a) (3) seems to require such periodic "nothing has happened" reporting - the lawyer is obliged to "keep a client reasonably informed about the status of a matter." Although the Comment to MR 1.4(a)(3) gives "such as significant developments affecting the timing or substance of the representation" as an example of "the status of a matter," the ABA drafters presumably could not intend that the lawyer need not periodically report on the status even if nothing of significance has occurred.

<u>What and When You Must Communicate</u>

Decisions from various jurisdictions and for enforcing various rules and codes of conduct provide guidance as to what and when you must communicate with your client. For example, you should notify your client of or inform your client concerning:

Upon becoming aware that the client had been named in a civil action. *Shalant v. State Bar*, 658 P.2d 737 (CA 1983).

Of the scheduling of a hearing and that a hearing has been vacated. *In re Getty*, 452 N.W.2d 694 (Minn. 1990) and *See People v. Hohertz*, 926 P.2d 560 (Colo. 1996).

That a dismissal of a client's claim is imminent even if the client earlier expressed an intention to no longer prosecute the claim - the client may have had a change of intention. *See In re Rosenthal*, 446 A.2d 1198 (NJ 1982).

That an opponent offers to resolve the dispute through alternative dispute resolution. Michigan Informal Ethics Opinion RI-255 (1996).

That you are unable to carry a matter forward promptly. *See, e.g., Passanante v. Yormark,* 350 A.2d 497 (NJ 1975); *In re Putsey*, 675 N.E.2d 703 (Ind. 1997).

That you have failed to act on your client's claim and that, therefore, the client may have a claim against you. *See Tallon v. Committee on Professional Standards*, 447 N.Y.S.2d 50 (1982); *In re Higginson*, 664 N.E.2d 732 (Ind. 1996).

That you have changed your address or your telephone numbers. *See, e.g., In re Carrigan*, 452 A.2d 206 (NJ 1982).

If recommending a course of action that may adversely affect your client, then advising of the risks and of the alternatives and of their consequences. *See Smith v. St. Paul Fire and Marine Ins.*, 366 F.Supp. 1283 (M.D. La 1973), *aff'd*, 500F.2d 1131 (5 Cir. 1974).

Meaningful advice, based upon having sufficiently educated yourself, about options available. *Mason v. Balcom*, 531 F.2d 717, reh'g denied, 534 F.2d 1407 (5 Cir. 1976).

After diligently investigating a claim against your client, advising of any potential defense (but not of every remote possibility - *Smith v. St. Paul Fire and Marine*, 366 F.Supp. 1283 (M.D. La 1973), aff'd, 500 F.2d 1131 (5 Cir. 1974)) or invalidity of the claim. *Muse v. St. Paul Fire and Marine Ins.,* 328 So.2d 698 (La. App. 1976).

Of facts suggesting that your client's legal objectives in a transaction are at risk and of the legal implications of those facts. E.g., *Republic Oil Corp. v. Danziger*, 400 N.E.2d 1315 (Mass. App. 1980).

Of adverse consequences that may arise from the execution of an agreement. *See Ramp v. St. Paul Fire and Marine*, 269 So.2d 239 (La. 1972).

That an agreement into which your client is considering entering will create more extensive obligation than your client wishes to assume. *See Viccinelli v. Causey,* 401 So.2d 1243 (La. App. 1981).

Of available alternative dispute resolution options if the court or opposing counsel propose it, or if you believe ADR is a viable option. Kansas Bar Assoc. Ethics Comm. Op. 94-1 (April 15, 1994).

Of your belief, if held, that no actionable claim exists. *In re McCausland*, 605 N.E.2d 185 (Ind. 1993).

Of motions to compel discovery of your client or of court imposed sanctions upon your client. *In re Schwartz,* 496 N.W.2d 605 (Wis. 1993).

Of your departure from your firm if you are a partner in the firm. *See, e.g., Palomba v. Barish*, 626 F.Supp. 722 (E.D. Pa. 1985).

In so far as settlement is concerned no doubt exists as to your obligation "to abide by [your] client's decision whether to settle a matter" (MR 1.2(a)) and to do so promptly (". . . a lawyer who receives from opposing counsel an offer of settlement in a civil controversy . . . must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or has authorized the lawyer to accept or reject the offer. [citing MR 1.2(a)]." MR 1.4 Comment [2]. Paragraph 5 of the MLA's Code of Professional Conduct requires that you keep your client "well-informed" and "actively involved in making decisions affecting them," and certainly you must do so regarding any activities impacting on settlement.

Some decisions in the area stand for the obvious:

You may recommend acceptance of a settlement but you may not coerce your client into acceptance. *In re Lewis,* 463 S.E.2d 862 (Ga. 1995).

A failure to communicate a settlement offer to your client is a violation of professional standards. Indeed "[e]ven when a client delegates authority to [you], the client should be kept advised of the status of the [settlement]." *See Comm. On Professional Ethics v. Behnke*, 486 N.W.2d 275 (Iowa 1992).

You must explain to your client the net recovery (or net outlay) involved in the settlement because if you fail to do so you will have failed to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding [your] representation." *See* Gafni, *Foreward: The Model Rules - A Practioner's Guide to Avoiding Malpractice*, 61 Temp. L. Rev. 1045 (1088).

Commonsensical Communication with Your Client

As part of your obligation to keep your clients well informed and actively involved in decision making, some information not mentioned in source materials I have read should, I believe, be included in your communication with your clients. I will mention several although they may strike you as commonsensical.

In the context of representing a business organization, at the outset one way to actively involve your client is to ask your client to identify precisely what entity or entities you represent and to advise you as to what role that entity has in the dispute, matter or transaction. With cargo owners, vessel owners, NVOCC's, insurers, charterers, terminals having multiple entities and layers, to not early on ask your client to identify who you represent puts you at risk.

Communicate with your client to ensure no trade secrets, private corporate arrangements, or other sensitive information exists which your client may not want to reveal which may, therefore, have to be subject to a confidentiality order or agreement.

Communicate to your client adjournments, extensions of time and other postponements so that your client does not believe some event or activity took place only later to learn you agreed to a delay.

If mediation or other form of ADR is to come into play, clearly communicate to your client whether the client or someone from the client business must appear in person or may appear by telephone or may simply arrange to be available to participate. Explain the options and possibilities and recommend one of them.

Rule 1.2 (a) of the ABA's Model Rules states that you "shall abide by a client's decisions concerning objectives of representation" (save for instances of criminality or improper conduct) and that you "shall consult with [your] client as to the means by which they are to be pursued." Consulting with your client as to the means by which you will try to meet the objectives set by your client requires communication leading to a well-informed and actively involved client.

Although "[c]lients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters," (MR 1.2 Comment [2]), in order for your client to make intelligent decisions regarding the objectives to be set for your representation, you are under a general duty to inform your client of all relevant facts and issues. *United States v. Teague*, 953 F.2d 1525 (11th Cir. 1992)

It also should be said that a lawyer must have the client's consent before making a decision that will affect a substantial right or interest of the client. *Graves v. P.J. Taggares Co.*, 616 P.2d 1223 (Wash. 1980).

Professor Waltham has said "Nothing lends more vitality to the client-lawyer relationship than effective communications between lawyer and client." (p. 163, 164, *Modern Legal Ethics*). He goes on to note that the importance of such communication is reflected in the "extra-ordinary protection" afforded communication between lawyer and client. How should such communications take place?

Obvious forms of communication are face-to-face meetings, telephone conversations, and written communication in the form of letters, telefaxes, e-mail, and so forth. Verbal communication is fine up to a point, but for significant issues thoroughly to be considered, written communications are preferable.

When considering how you can most effectively communicate to ensure your client is well informed, have in mind that simply forwarding to your client pleadings, motion papers and litigation developed paper you are serving upon/receiving from your adversary is not, I believe, effective communication. It is no better communication than a medical doctor who, after silently examining you, hands you a prescription and a medical text.

Effective communication explains the "whats" and "whys" of what you have done, are doing and propose to do and explains how those activities impact on the objectives of your client who is paying you to meet those objectives.

Your written communications dealing with issues, fact or legal, can be written in a format similar to a legal brief with an introduction stating the purpose of your communication, identity of any issue being presented for decision, relevant facts, possible courses of conduct, brief summary of your recommendation followed by a more detailed explanation and (a) a conclusion reviewing the decision/s as to which you are requesting your client's response and (b) a recommendation as to one of the several courses of conduct the advantages and disadvantages of which you have already discussed.

Although often not thought to be, your bill, if it is a time-based bill with entries describing the services performed, is an important form of communication with your client. Client's read your bills - you as well should do so. In terms of maintaining the trust of your clients, your bills are as important as any communication you have with your client.

But in the end, the "How" of communication is not nearly so important as the need for you to communicate with your client to keep your client well informed.

Conclusion

Recall the "primary question" of the ABA's Commission on Professionalism:

What, if anything, can be done to improve both the reality and the perception of lawyer professionalism?

Certainly if maritime lawyers adhere to the tenets of the MLA's Code of Professional Conduct then the "reality" of lawyer professionalism will be improved. If maritime lawyers adhere to paragraph 5 of the MLA's Code then particularly from a client's perspective the perception and reality of lawyer professionalism will be well served:

> . . . maintain the trust of [your] clients by keeping them well-informed and actively involved in making decisions affecting them.

Effective, complete and timely communications to your clients will strengthen their trust in you and will naturally lead to their active involvement in making decisions that affect their interest.

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The Code of Professional Conduct of the Maritime Law Association of the United States

1. I will provide the highest lever of competency and efficiency in the performance of all legal services.

2. I will comply with all rules and codes and codes of professional conduct, respect the law, and preserve the decorum and integrity of the judicial process.

3. I will be civil and courteous to all colleagues, parties, witnesses and the courts, recognizing the effective representation is under mined by antagonistic behavior.

4. I will keep my word in the conduct of my legal practice and treat my colleagues, parties, witnesses and the courts with respect and dignity.

5. I will maintain the trust of my clients by keeping them well-informed and actively involved in making decisions affecting litigation.

6. I will resolve all disputes expeditiously and not engage in any course of conduct which unnecessarily increases cost or delays litigation.

7. I will engage in the discovery process, seeking an expeditious result for my client's legitimate interest, while avoiding abuse and harassment of witnesses and parties.

8. I will contribute time and resources to *pro bono* activities.

9. I will not mislead or make any misrepresentation to the court.

10. I will exemplify and instill in others the tenets of this Code of Professional Conduct.

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Rules 1.2 and 1.4 of the Model Rules of Professional Conduct of the American Bar Association

Rule 1.2 Scope of Representation

(a) Subject to paragraph (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.
(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.
(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.
(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but the lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Rule 1.4 Communication

(a) A lawyer shall
(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
(3) keep the client reasonably informed about the status of the matter;
(4) promptly comply with reasonable requests for information; and
(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

STATEMENT OF CLIENT'S RESPONSIBILITIES,* NEW YORK STATE BAR ASSOCIATION

Reciprocal trust, courtesy and respect are the hallmarks of the attorney-client relationship. Within that relationship, the client looks to the attorney for expertise, education, sound judgment, protection, advocacy and representation. These expectations can be achieved only if the client fulfills the following responsibilities:

1. The client is expected to treat the lawyer and the lawyer's staff with courtesy and consideration.

2. The client's relationship with the lawyer must be one of complete candor and the lawyer must be apprised of all facts or circumstances of the matter being handled by the lawyer even if the client believes that those facts may be detrimental to the client's cause or unflattering to the client.

3. The client must honor the fee arrangement as agreed to with the lawyer, in accordance with law.

4. All bills for services rendered which are tendered to the client pursuant to the agreed upon fee arrangement should be paid promptly.

5. The client may withdraw from the attorney-client relationship, subject to financial commitments under the agreed to fee arrangement, and, in certain circumstances, subject to court approval.

6. Although the client should expect that his or her correspondence, telephone calls and other communications will be answered within reasonable time frame, the client should recognize that the lawyer has other clients equally demanding of the lawyer's time and attention.

7. The client should maintain contact with the lawyer, promptly notify the lawyer of any change in telephone number or address and respond promptly to a request by the lawyer for information and cooperation.

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* The Statement of Client's Responsibilities is the product of "a unique collaborative effort between the Office of Court Administration and the New York State Bar Association." Joshua M. Purzansky, *Lawyers' Rights and Client's Responsibilities*, N.Y. L.J., Feb. 26, 1998, at 2. Unlike the Statement of Client's Rights, it is not a court rule. The Office of Court Administration has no jurisdiction over clients. However, lawyers may post it in their office and distribute it to their clients.

8. The client must realize that the lawyer need respect only legitimate objectives of the client and that the lawyer will not advocate or propose positions which are unprofessional or contrary to law or the Lawyer's Code of Professional responsibility.

9. The lawyer may be unable to accept a case if the lawyer has previous professional commitments which will result in inadequate time being available for the proper representation of a new client.

10. A lawyer is under no obligation to accept a client if the lawyer determines that the cause of the client is without merit, a conflict of interest would exist or that a suitable working relationship with the client is not likely.

STATEMENT OF CLIENT'S RIGHTS

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, ALL DEPARTMENTS*

The Appellate Divisions of the Supreme Court, pursuant to the authority vested in them, do hereby, effective January 1, 1998, add Part 1210 to Title 22 of the Official Compilation of Codes, Rules and Regulations of the State of New York as follows:

Section 1210.1 Posting

Every attorney with an office located in the State of New York shall insure that there is posted in that office, in a manner visible to clients of the attorney, a statement of client's rights in the form set forth below. Attorneys in offices that provide legal services without fee may delete from the statement those provisions dealing with fees.

The statement shall contain the following:

1. You are entitled to be treated with courtesy and consideration at all times by your lawyer and the other lawyers and personnel in your lawyer's office.

2. You are entitled to an attorney capable of handling your legal matter competently and diligently, in accordance with the highest standards of the profession. If you are not satisfied with how your matter is being handled, you have the right to withdraw from the attorney-client relationship at any time (court approval may be required in some matters and your attorney may have a claim against you for the value of services rendered to you up to the point of discharge).

3. You are entitled to your lawyer's independent professional judgment and undivided loyalty uncompromised by conflicts of interest.

4. You are entitled to be charged a reasonable fee and to have your lawyer explain at the outset how the fee will be computed and the manner and frequency of billing. You are entitled to request and receive a written itemized bill from your attorney at reasonable intervals. You may refuse to enter into any fee arrangement that you find unsatisfactory. *In the event of a fee dispute, you may have the right to seek arbitration; your attorney will provide you with the necessary information regarding arbitration in the event of a fee dispute, or upon your request.***

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* Because changes to these rules are made at the court's discretion, readers are strongly cautioned not to rely on the text set forth herein without first verifying its accuracy with the clerk of the court.

**Italicized language added effective 1 June 2001.

5. You are entitled to have your questions and concerns addressed in a prompt manner and to have your telephone calls returned promptly.

6. You are entitled to be kept informed as to the status of your matter and to request and receive copies of papers. You are entitled to sufficient information to allow you to participate meaningfully in the development of your matter.

7. You are entitled to have your legitimate objectives respected by your attorney, including whether or not to settle your matter (court approval of a settlement is required in some matters).

8. You have the right to privacy in your dealings with your lawyer and to have your secrets and confidences preserved to the extent permitted by law.

9. You are entitled to have your attorney conduct himself or herself ethically in accordance with the Code of Professional Responsibility.

10. You may not be refused representation on the basis of race, creed, color, religion, sex, sexual orientation, age, national origin or disability.

Selected Sources

Books

Annotated Model Rules of Professional Conduct, Center for Professional Responsibility of American Bar Association (2003, Fifth Edition).

Modern Legal Ethics, Wolfram, Charles W. (West Publishing Co. 1986)

Professional Responsibility, Rotunda, Ronald D. (West Publishing Co., 1995, Fourth Edition)

Professional and Personal Responsibilities of the Lawyer, Noonan, John T., Jr., and Painter, Richard W. (The Foundation Press, 1997)

Loose-leaf Services

"Lawyer's Manual on Professional Conduct," Loose-leaf Service published by the American Bar Association and the Bureau of National Affairs, Inc. (through September 24, 2003, Supplement).

"The Law of Lawyering," Hazard, Geoffrey C., Jr. and Hodes, W. William (Aspen Publishers, Inc., Second Edition (through 2003 Supplement)).

"The New York Code of Professional Responsibility; Opinions, Commentary and Caselaw," edited by Daly, Mary C. (Oceana Publications, Inc., through Release 2003-4).

Report

" '. . . . In the Spirit of Public Service:' A Blueprint for the Rekindling of Lawyer Professionalism," American Bar Association Commission on Professionalism (ABA, 1986).