



THE INTERSECTION OF DEDICATION, INTEGRITY, AND CIVILITY

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*"Be civil to all, sociable to many, familiar with few, friend to one, enemy to none."
—Benjamin Franklin*

There are many definitions of dedication. For example, right now I am hunkered down in a darkened office in a seat by a window -- the only source of light. One of our many winter storms has 660k+ households and businesses in the Delaware Valley without power, and I am no exception. I am wearing a coat on top of my clothing. My hands are aching slightly from the cold as I type. I am working on my iPad -- the only device out of many I can count on to have sufficient "juice" to last me through the time I will require -- in order to get an article finished and off to the editor, because it is on deadline.

Each of you has a similar story to tell about steps, often extraordinary steps, you have taken more than once to help a client. I find that attorneys are extremely dedicated to serving their client's needs. It goes way beyond what is necessary in a competitive marketplace. It's dedication which is self-motivated and deeply ingrained. That dedication continues to earn my highest respect for the profession.

I want to share with you a lively discussion which recently drew the attention of a number of members of the PBA Solo & Small Firm Section Listserv. I do so after providing notification to those members, and obtaining permission from any I might quote. The issue discussed has come up from time to time on the hot line, and is of importance to all attorneys. More importantly, it is an issue which deserves to be examined and openly discussed in the light of day, rather than lurk in the shadows of your professional lives.

It is a fact of life that too often your clients do not appreciate the dedication you devote to their matters. In your collective efforts to exceed client expectations, clients have become somewhat "jaded" and mostly lacking in appropriate recognition and appreciation of those efforts. Of course, you must still strive to exceed expectations, despite the disheartening lack of recognition you sometimes face.

What I find unacceptable, however, is how often clients not only fail to recognize and appreciate your efforts, but how often they fail to pay for those efforts. It is my heartfelt belief that each and every one of you should be fully paid for the work you do, provided of course that you do a reasonable job, and don't take an excessive amount of time to do it. But the reality is that often the more pragmatic and wise decision is to walk away from your outstanding receivable. Nowadays, there are legal obstacles to collection efforts, and the threat of retaliative malpractice lawsuits cannot be ignored. It stinks, yes, but at least search for what can be learned for the future.

So here's what I don't get. Each of you are suffering from this current state of events. Each of you are being stiffed by clients who can afford to pay and choose not to. Or by clients who nitpick in a weak subterfuge to get the bill reduced. Or by clients who rack up big bills, and then change counsel to avoid paying. Why are attorneys not collectively trying to improve this situation? Why are so many of you exacerbating this situation by being decidedly uncivil and unsympathetic to your fellow attorneys?

Let me just come out and ask you this question: when you are engaged by a client who owes previous counsel money, what do you do? What should you do? Does the prospect of a new paying client suppress that small voice of integrity struggling to be heard?

Philadelphia attorney David E. Pearson writes, "I have a long-standing policy of not accepting a client who owes another lawyer money, no matter what the circumstances, be there a bona fide dispute, or whatever. I insist that the prospective client resolve the issue with the lawyer before I will be engaged by them. I don't remember whether I heard this somewhere or it just occurred to me."

Reading attorney Eugene Orlando, Jr. wrote in response, "Where I HOPE you heard it is from the attorney or attorneys who mentored you, For those on the list, many who not have had the benefit of having a good mentor, let me briefly amplify this. If a client comes in and advises that he or she is presently represented by other counsel, our first question should be 'then why are you here?'"

"Clients have a right to change counsel and sadly, sometimes a client's desire to do so may very well be justified by the facts and circumstances. That must be determined. Absent special circumstances, however, when 'seeking new counsel' is the answer to the question above, your next question should then be 'do you



presently owe current counsel any money?' If the answer is 'yes' you should then immediately make clear to the client that although you may continue the interview and you may decide to undertake the representation, your future involvement will require a resolution and arrangements satisfactory to all three of you (prior counsel, you, and the client) concerning how and when soon-to-be prior counsel's outstanding invoice(s) will be satisfied. Although there could be bona fide disagreements of amounts due, there are legitimate avenues to address those such as client dispute committees of the local bar association etc. that one can refer the client to. But if the client is just unhappy and for that reason is unwilling to pay current counsel, I decline the representation. That should also be a signal to you that today's champion is tomorrow's unpaid lawyer in the eyes of this particular client, and most attorneys I know will also not take that representation."

When interviewed on the topic, Philadelphia attorney and Immediate Past President of the PA Bar Association, Thomas G. Wilkinson, said, "Civility among lawyers is expected by our Judges, and advocates who demonstrate professionalism are no less effective in the adversary process.... The fact that the client has already discharged ... prior lawyers ... usually means that the client has unreasonable expectations concerning the matter. Therefore, it is likely that you also will not be able to satisfy the client's unreasonable expectations. It should be even more troubling if the client is accusing the prior counsel of malpractice. If you take the matter, you are likely next.... Another issue that often arises when a client changes lawyers frequently is that the client is unhappy with the expense of the matter and is hoping to engage a lawyer who will discount fees and cut corners. Again, if the client is trying to get the matter done on the cheap, you will only confront the same issues with the client in your representation....before you make a final decision you should undertake to speak to the prior counsel if that is at all feasible based on your relationships with prior counsel."

Is civility really dead? Absent a personal review of the file to determine that prior counsel made egregious errors or blatantly overcharged, are some of you willing to just take a new client's word for it and treat your colleagues in such an unprofessional manner? Does zealous representation of clients require that you throw civility out of the window or under the bus?

I hope this conversation continues.



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