

The Ethics of Client Service

In many service occupations, what the customer has a right to expect – and what the service provider has a duty to provide – can be rather ambiguous. What standards govern the work of an IT consultant, a janitorial company, a landscaper? Other than the objective measure of hours worked and the subjective assessment of how well or badly the work was performed, there are no fixed standards to inform the provider or to establish reasonable expectations on the part of the client.

The legal profession is different. Fixed standards do govern the lawyer's work and provide a basis for reasonable client expectations. Those standards are codified in the Rules of Professional Conduct (RPCs), which have the force of law and apply to all lawyers practicing in the jurisdiction. Under the RPCs, a lawyer must be diligent, competent, candid with the client, and his or her fees must be reasonable.

The requirement that a lawyer be diligent means that the client has a right to expect phone calls and emails to be returned within a reasonable time, work to be performed timely, and reasonable client and all court deadlines met. To accomplish this, the lawyer must control his or her work load so that he or she can competently pursue each client's interests. Because the RPCs have the force of law, a lawyer who fails to meet these standards is violating his or her professional duties to the client.

The requirement of competence means that the client has a right to expect that a lawyer who accepts an engagement has the *ability* to perform the work competently and *will* perform it competently. This is not a guarantee of success or a promise that the lawyer is superior to others practicing in the same area of law. But it does obligate the lawyer to provide and entitles the client to receive effective legal representation. At a minimum, this

means conducting a reasonable investigation into the relevant facts and applicable law, obtaining necessary discovery, retaining experts when needed, making appropriate motions, and keeping informed of changes in the law that could impact the client's rights.

A lawyer's duty to be candid with the client is especially important because it provides the foundation of trust essential to a successful attorney-client relationship. Unfortunately, the breach of this duty generates many lawyer disciplinary actions. It is simply unethical for a lawyer not to advise his or her client about risk factors in a litigation matter. Nor can a lawyer remain silent if a deadline is inadvertently missed or the court makes a ruling adverse to the client – the information must be shared. Just as importantly, a lawyer must make sure the client has the information it needs to make sound decisions. For example, an HOA Board prosecuting a construction defect claim cannot make prudent settlement decisions without knowing what insurance coverage exists for the claim. This is information the lawyers are entitled to obtain in litigation and should always pursue to the best of their ability (diligence and competence). In a recent HOA decision, the court found that the lawyers representing an HOA acted unethically and breached their duties to the HOA by failing to obtain insurance information from the developer, by assuming there was insurance and assuring the HOA of that when the lawyers had no information and by failing to advise the client of the true insurance picture when it later became known.

Whether a lawyer's fee is hourly or contingent, it must be reasonable. Under the RPCs, a reasonable fee is one that takes into account the skill and experience of the lawyer, the difficulty or novelty of the work, the risk assumed by the lawyer in a contingent case, the time actually spent performing the work, the hourly rates customarily charged for similar work in the locality, and other similar factors. It is ethical for a lawyer to advance costs for a

client, but under the RPCs the client must remain “ultimately liable” to reimburse them. However, it is illegal and unethical for a lawyer to pay a referral fee or kickback. For example, a lawyer cannot pay an association manager to recommend the lawyer’s services to an association. A lawyer can ethically share a fee with another lawyer, provided the fee sharing is based on the work performed by each and the arrangement is disclosed to the client.

As lawyers, we are entrusted with protecting our client’s rights, confidences and property. Our rules of ethics require, quite understandably, that we discharge this work diligently, competently and with candor, and that our fees be reasonable. Clients have the right to expect this.