

PRACTICE TIPS FROM BAR COUNSEL

HOW TO GET A BAR COMPLAINT WITHOUT VIOLATING THE RULES OF PROFESSIONAL CONDUCT

BY GLENN MACHADO, ASSISTANT BAR COUNSEL, STATE BAR OF NEVADA

Clients complaining to the state bar are always unhappy with their attorneys. Sometimes the basis for a client's displeasure is that the attorney, in fact, violated Nevada's Rules of Professional Conduct.

More often than not, however, the client's unhappiness does not stem from actual professional misconduct by the attorney, but rather from actions incidental to the representation. Two examples of reasons for complaint frequently seen by our office are that an attorney took collection actions against a client, or sent another attorney to cover a hearing that resulted in an adverse ruling to the client.

1. Asserting a retaining lien on a client's file and/or suing the client for unpaid legal fees. If you want to get a former client irate at you, either of these actions is a virtual slam-dunk. Nothing will get a client complaining to the state bar that you were incompetent, negligent, let your paralegal run the show or failed to consult with them regarding important decisions more quickly than you asserting a retaining lien or suing the client. Frequently, a civil complaint, in addition to generating a bar complaint, will also result in a counterclaim alleging malpractice.

Neither asserting a retaining lien nor suing a client is prohibited by the Rules of Professional Conduct. In fact, retaining liens are explicitly permitted.¹ But, as Jeff Goldblum said in the movie *Jurassic Park*, just because you can, doesn't mean you should.² You may wish to weigh the amount of money owed by the client against the potential headaches of a bar complaint and/or a malpractice action, especially when the underlying representation may have been less than exemplary.

2. Sending an associate or another attorney to cover a hearing. Other than the attorney taking collection actions against a client, the most frequent impetus for a bar complaint stems from an adverse ruling such as a trial verdict, workers' compensation finding or a change of

custody motion. The negative result, according to the client, is, of course, never due to the merits of his or her case, but rather the attorney's incompetence or negligence.

A frequent focal point of the client's anger in such grievances is that the attorney did not "bother" to personally appear at the hearing in question. Rather, another lawyer, perhaps the attorney's colleague or an associate, covered the appearance. The client is especially angry if it is a hearing at which he or she had to personally appear.

According to the grieving client, the reason the motion was lost was due to the substitute attorney being "completely clueless" and unprepared for the hearing. Further, if the substituting attorney happened to look through the file to reference a pleading or an exhibit, that action is almost always characterized by the client as "stumbling through the file." Simply put, the substitute attorney can do no right.

Again, sending an associate to cover a hearing or, if you're a sole practitioner, having a colleague appear on your behalf, is certainly not prohibited.

However, from a customer-relations standpoint, you may wish to discuss the issue with your client ahead of time, even if you previously discussed it when you were retained by the client and it is specifically mentioned in the fee agreement.

The reason to do so is that some clients, especially when retaining smaller firms, expect the named partner, with whom they initially met, to handle all hearings. They often take umbrage when another attorney appears instead, especially when the hearing results in an adverse ruling.

In addition, if you know or strongly suspect that a ruling will go against your client, you may wish to prepare the client ahead of time, even if the hearing concerns a relatively minor matter. A surprised client is often an unhappy client. And unhappy clients submit bar complaints.



I could fill an entire issue of *Nevada Lawyer* with examples of grievances stemming more from a lapse in customer relations than from any truly unacceptable act by the attorney. Do you necessarily have to return all 10 calls your client placed this week, in order to comply with RPC 1.4 (Communication)? No, but spending an extra 15 minutes with a client on occasion may save you from spending hours, if not an entire weekend, drafting a response to the state bar.

Remember: it's rare that one of your best cases will lead to a bar complaint. More often than not, it's the problematic case with the equally problematic client with whom you want to deal as little as possible. And when these cases blow up, as they tend to do, bar complaints follow.

As Bar Counsel Rob Bare often says, the Rules of Professional Conduct represent only the minimum standards expected of attorneys. True professionalism requires attorneys to conduct themselves in a manner above and beyond what is required by the rules. It also results in fewer bar complaints.**NL**

GLENN MACHADO is Assistant Bar Counsel for the State Bar of Nevada. A native of New York, where he also is licensed to practice law, he was admitted to the Nevada bar in 2001. Before joining the State Bar of Nevada in 2004, he practiced commercial litigation and transactional law.

1 See, e.g., *Figliuzzi v. Eighth Judicial District Court*, 111 Nev. 338, 890 P.2d 798 (1995).

2 Of course, Goldblum's character was referring to cloning dinosaurs rather than asserting retaining liens. Just in case you haven't seen the movie.