

BAR BULLETIN

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Dare to Communicate and Move Ahead

By Faith Ireland

In times of crisis our mammalian brain responds with flight, fight, or freeze. In COVID-19 times, attorneys could not flee. By order of the Governor, they were sent home to shelter in place. Hopefully, they treat house mates with respect and kindness rather than fighting. But what about freezing?

Washington Rule of Professional Conduct (RPC) 1.3 requires a lawyer to act with reasonable diligence and promptness in representing a client. With the office shuttered, staff not readily available and the stress of conditions, inaction may seem justified. However, as noted in the comments to RPC 1.3 “Perhaps no professional shortcoming is more widely resented than procrastination.” A client’s interests may be compromised, or in the case of missing the statute of limitations, destroyed. Even when the interest is not affected, delay can cause needless anxiety and erode client confidence in counsel.

The COVID-19 consequences for lawyers like everyone else may have included the death of a family member, a loved one, dear friend or colleague. The normal funeral or celebration of life could not happen. Yet, grief takes no rest. The grieving lawyer needs to reach out for support in meeting client needs. “A reluctance to ask for help makes lawyers...uniquely vulnerable to depression” as noted on the WSBA website.¹

Confronted habitually with multiple demands and deadlines, lawyers are vulnerable to stress and anxiety. Adrenaline and cortisol hormones and the neurotransmitter norepinephrine keep lawyers alert and on edge. They can also cause acute stress. At the WSBA CLE Store a free On-Demand Seminar provides practical tips to reduce stress and guidance on mindfulness, self-care, resilience, and wellbeing.²

WSBA also maintains among its member benefits services to support a lawyer

as a member at no additional costs. One of those is the Mental Health/Self-Care Consultation which offers groups and individual confidential consultations promoting wellness and providing referrals.

Have you or someone in your family lost a job? Is your overhead continuing while your clients are not paying their bills? Is your personal anxiety on high?

Still, duty calls. Communicating with the client is essential. RPC 1.4 requires keeping the client reasonably informed about the status of the matter. This includes letting them know the impact of court orders related to COVID-19 on their case. Communicating well with clients is a foundational skill for lawyers. The lawyers should try to keep an upbeat demeanor and make the client comfortable. Active listening is critical. Instead of thinking about what you will say next, listen to fully understand and appreciate your clients hopes and fears. From the first phone call to closing the file, take care to create client-centered interactions.

Communicating with opposing counsel is likewise essential. There was a time when the preamble to the RPC encouraged an attorney to represent the client zealously. No more. Webster defines “zealous” as “marked by fervent partisanship for a person, a cause, or an ideal.” Today the preamble obligates the lawyer “conscientiously and ardently to protect and pursue a client’s legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.”³ This includes opposing counsel.

As the bar association has grown and multiplied, and technology prevails, personal contact between counsel may have shrunk. In this COVID-19 environment, personal and thoughtful communication with opposing counsel may serve all parties and the profession as never before. In the present situation, consider a phone

call where your purpose is first to inquire about counsel’s circumstances with respect and empathy. Only then, if appropriate, discuss the case, next steps, timing etc. If not appropriate, perhaps set a time to talk business at a date certain.

Collaborative lawyer and judicial magistrate in Iowa, Karen Thalacker, blogging on a legal malpractice insurer’s website⁴ gives three tips for lawyer to lawyer communications. She suggests you do not use ALL CAPS, multiple exclamation points or change font colors in letters and emails. She also suggests that the lawyers stay professional rather than personalizing the issues. She recommends using the words “my client reports that” where controversial facts are discussed.

A lawyer should also use care in talking to the media about the case and opposing counsel. Painting the adverse party’s lawyer negatively is unlikely to win the case and it exasperates and inflames the conflict.

Collegiality matters. As the Preamble to the RPC states “A lawyer, as a member of the legal profession, is a representative of clients, an officer of the court and a public citizen having special responsibility for the quality of justice.”⁵ In law firms attention is given to camaraderie, collaboration and participation. Opposing counsel is also a colleague in the pursuit of justice. ■

Justice Faith Ireland (Ret) served as a judge and justice for over 20 years. She is presently an arbitrator, mediator, and appellate neutral analyst with JAMS. She can be reached at Fireland@jamsadr.com.

¹ <https://www.wsba.org/for-legal-professionals/member-support/wellness/mental-health>

² <https://www.mywsba.org/PersonifyEbusiness/CLEStore/Master-Your-Stress--Practical-Tips-to-Reduce-Stress-in-Business-and-Life--Legal-Lunchbox-Series/ProductDetail/16485868>

³ Preamble: A Lawyer’s Responsibilities [9] [Washington Revision]

⁴ <https://blog.alpsnet.com/be-nice-lawyer-to-lawyer-communication>

⁵ Preamble: A Lawyers’ Responsibilities [1].