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Keeping Clients Informed: How Much Is Enough?

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Over the past two years, the Oregon Supreme Court issued a pair of decisions sketching the contours of the duty to communicate with clients. In the first, *In re Snyder*, 348 Or 307, 232 P3d 952 (2010), the Supreme Court found that the level of communication was insufficient and disciplined the lawyer. In the second, *In re Groom*, 350 Or 113, 249 P3d 976 (2011), the Supreme Court determined that the amount of communication was adequate and dismissed the charges. Each case turned largely on its individual facts. Collectively, however, the two allowed the Supreme Court to explore the duty of communication under RPC 1.4, which did not have an identical predecessor in the former Oregon Disciplinary Rules.

In this column, we'll first look at the Supreme Court's explanation of this important duty. We'll then turn to simple and practical ways that you can meet the standards that the Supreme Court outlined.

The Duty

RPC 1.4 sets out two elements in the duty of communication. First, we have a duty to keep a client reasonably informed. Second, we have a corresponding duty to explain matters in a way that the client will understand so that the client can make informed decisions.

In *Snyder*, the Supreme Court summarized the nub of the duty:

“RPC 1.4 requires lawyers to maintain reasonably adequate communication with their clients by keeping clients informed about the status of their matters, by complying with reasonable requests for information, and by explaining matters to the extent reasonably necessary to permit clients to make informed decisions.” 348 Or at 315.

In *Groom*, the Supreme Court cataloged the factors that underpin the duty:

“From the text of RPC 1.4 and from the cases interpreting it and former DR 6-101(B) (diligence), it is clear that deciding whether a lawyer has violated RPC 1.4 requires a careful examination of all of the facts. Factors that are relevant to that inquiry include the length of time between a lawyer’s decision and the lawyer’s communication of that decision to the client, whether the lawyer failed to respond promptly to reasonable requests for information from the client, and whether the lawyer knew or a reasonable lawyer would have foreseen that a delay in communication would prejudice the client.” 350 Or at 124.

Meeting the Duty

Meeting our duty of communication can have significant practical consequences. A client who understands and participates fully in a strategic decision may be less likely to “second guess” it later. Documenting the client’s participation in the decision will also provide the lawyer with an important record later if the client expresses disappointment with “how we got here.”

On a practical level, communication turns on a blend of the methods, timing and content. With each, there is no magic formula.

On methods, copying clients on letters and emails is a simple but effective way of providing the client with a running record of case events. Taking the time to write a short status report along with the monthly bill is a great tool to both

remind the client of the work recounted in the bill and preview the next steps that you will be taking in the coming month. Finally, a promptly returned phone call can spell the difference between an issue resolved and one left to fester.

On timing, *Groom* in particular noted that although what is “reasonable” will vary with the circumstances, information needs to be communicated “sooner rather than later” if a delay puts the client at risk of harm.

On content, lawyers need to balance both the audience and the complexity of the subject. If the lawyer is communicating with the general counsel of a corporate client, the content will likely be different than if the client is a relatively unsophisticated individual. Similarly, complex subjects normally require a fuller explanation than simple ones.

ABOUT THE AUTHOR

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