

Stress-Free Practice

(Is That Like a Fat-Free Meal?)

By Sam Phillips

As lawyers, we spend about half of our waking hours doing something related to our profession. (Some, of course, work much more than that.) And even when we aren't actually "at work," many of us are brainstorming solutions to case problems and office issues. We spend time worrying about last week's trial, today's transaction, and next week's brief. Or, we worry about the adequacy of our incomes and retirement accounts, personnel problems in our office, and fee disputes. As if that isn't enough, we worry about our children and we worry about our communities, not to mention the global economy. This article does not suggest solutions to those latter concerns. It is intended simply to point out several strategies to reduce the stress of practicing law.

A premise of this article is that if we keep our clients mostly satisfied, professional anxiety can be significantly reduced. We know we cannot win every case, and we know that most legal issues are resolved by some type of compromise. Does that mean that clients are unhappy with their lawyers in all but the very few cases in which they achieve an outright victory and their wildest dreams are achieved? Of course not. A look at disciplinary complaint history indicates that clients complain about their lawyer's communication failures and neglect of their cases much more frequently than they complain about bad results. Few disciplinary complaints involve charges of incompetent legal strategy.

So, if legal strategy isn't the chief cause of client complaints, what is?

Asked another way, since being an effective legal strategist apparently isn't enough, what else can we do to satisfy clients – and reduce our own stress? Here are seven ideas:

1. COMMUNICATE

By most accounts, clients want information as much as anything. Most lawyers enjoy above average communication skills, and most of us enjoy defining problems and then creating and explaining solutions. Everyone is well-served when lawyers use those skills, not only to advance their clients' causes, but to keep clients informed, regularly and frequently. Lawyers can encourage fee payments, avoid complaints (and protect themselves in the event of complaints) by describing the value of their work. When setbacks occur, timely explanations ward off complaints. And, as the public service commercials about highway speeding told us in the 1980s, "It's not just a good idea, it's the law":

MISSOURI SUPREME COURT RULE 4-1.4:

(a) *A lawyer shall:*

(1) *keep the client reasonably informed about the status of the matter;*

(2) *promptly comply with reasonable requests for information; and*

(3) *consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows the client expects assistance not permitted by the Rules of Professional Conduct or other law.*

(b) *A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.*

2. CALENDAR IT AND CHECK IT

Clients are understandably annoyed when lawyers miss deadlines and court appearances. And when lawyers don't adequately explain case delays, clients express their disappointment, often to their friends, other lawyers, and, of course, to the OCDC. Obviously, those situations are not much fun for the lawyers who missed the deadlines, either. It is not the purpose of this article to recommend a particular software program, a Blackberry, Palm, or any commercially available paper system. But the implementation of some program, with failsafe redundancies, is essential. The strict use of such a system not only protects clients, it also allows attorneys to sleep better.

The Missouri Bar's Law Practice Management Online Center and Lending Library provides all variety of materials to help lawyers keep organized. Commercial vendors also provide excellent tools.

3. CHOOSE CLIENTS CAREFULLY

Lawyers who carefully screen their prospective clients for compatibility, previous problems with other lawyers, and ability to pay report that they enjoy their practice much more than in earlier times, when they accepted every prospective client's case. Also, many lawyers who reduce their practice areas to fields where they are comfortable also report reduced stress. They say they enjoy developing an expertise in a limited field of law. Another result of a narrow practice can be an enhanced reputation in the legal community in that field. Marketing strategists say that a good referral system from within the bar can

be a low-cost, yet very effective, marketing strategy.

4. GET PAID

It almost goes without saying that clients who appreciate the value of their lawyer’s efforts are more willing to pay fees. Clients who don’t know what their lawyers accomplished, or tried to accomplish, are the ones who file complaints about fees and services. Regular billing statements, with explanations of legal work completed, also remind clients that their lawyers are working on their cases even when clients are otherwise frustrated with the pace of the legal system. Written and detailed fee agreements can prevent fee disputes; those documents can also establish the parameters of the representation and provide support to attorneys who may be later engaged in defending malpractice actions or disciplinary complaints. Rule 4-1.5(a) sets the standards for fee reasonableness. Lawyers should take advantage of The Missouri Bar’s Economic Survey. That survey, which is available at the bar’s website, shows fee types and rates around the state.

RULE 4-1.5: FEES

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;*
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;*
- (3) the fee customarily charged in the locality for similar legal services;*

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(f) When a fee dispute arises between a lawyer and a client, the lawyer shall conscientiously consider participating in the appropriate fee dispute resolution program. This does not apply if a fee is set by statute or by a court or administrative agency with authority to determine the fee.

COMMENT

Basis or Rate of Fee

[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, an understanding as to fees and expenses must be promptly established. Generally, it is desirable to furnish the client with at least a simple memorandum or copy

of the lawyer’s customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee, and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of the representation. A written statement concerning the terms of the engagement reduces the possibility of misunderstanding.

Sometimes, disciplinary complaints are really disputes over fees. The OCDC refers those complaints to The Missouri Bar, the Bar Association of Metropolitan St. Louis and the Kansas City Metropolitan Bar Association; all have Fee Dispute Resolution Programs to help lawyers and their clients resolve those disputes.

5. HOLD CLIENT MONEY SACRED (AND SEPARATELY)

Lawyers who study and religiously follow Missouri trust accounting rules eliminate a significant potential anxiety. By building record-keeping systems to protect clients’ funds, and by complying with both the spirit and the letter of those rules, lawyers meet their fiduciary obligation in our self-regulated profession. See Missouri Supreme Court Rule 4-1.15.

6. PLAN FOR THE INEVITABLE — AND BACK UP YOUR COMPUTER

The Comments to Missouri Supreme Court Rule 4-1.3 advise lawyers to protect their clients by planning for their own death or disability. Many of us have at least mild anxiety about leaving a mess that might be found in our office. Those who prepare, by creating estate plans, partnership agreements and business succession plans, reduce their anxiety. Those who periodically

review and update those plans are better able to continually protect their clients, as well as their own families. The Missouri Bar has developed the Planning Ahead Guide for lawyers looking for practical tips and forms.

In addition to preparing for their own death or disability, lawyers who prepare for the possibility of lost files through fires, floods, and tornadoes also protect their clients' interests. Lawyers who have rebuilt an office after losing records, whether in a flood or in a computer crash, will say that they wished they had consistently maintained off-site back-up ... of everything.

7. ADDRESS THE STRESS

All lawyers, at various points in their lives, feel overwhelmed by the crush of business, the pressures imposed by their firm, or the struggles inherent in trying to balance family and career. Lawyers have various responses to those overwhelming feelings. The lawyers who seek assistance help themselves deal with those feelings. They also better protect their clients.

The Missouri Bar's Lawyers' Assistance Program (MOLAP) is always available for lawyers seeking assistance, whether for themselves, their partners or their families. Contact MOLAP at 1-800-688-7859.

ADDITIONAL RESOURCES

Missouri lawyers who want to make change to reduce stress, enjoy their profession and better protect their clients, don't have to start from scratch, or work alone. The Missouri Bar provides numerous resources addressing every issue discussed in this article. The bar's "Client Keeper" software contains forms and materials to make regular client communication easy. Commercial low-tech and high-tech solutions to calendaring and case management can be found online. The bar's Member Services Department can suggest reviews and discussion groups for those programs.

Numerous helpful articles about ethically setting and collecting attorney fees can be found at the websites of The Missouri Bar (www.mobar.org),

the Legal Ethics Counsel (www.mo-legal-ethics.org) and, soon, the Office of Chief Disciplinary Counsel (www.mochiefcounsel.org).

IN SUMMARY:

A stress-free practice is, indeed, akin to a fat-free diet, and maybe a "paperless office." Occasionally, we want real ice cream, and we still need paper copies of some documents. Likewise, we use stress as motivation; without it, many of us would get very little done. But The Missouri Bar provides tools to help reduce the excess stress of practicing law. For support, contact the Member Services Department at The Missouri Bar (573-635-4128) or go to www.mobar.org.



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Got a Great Idea?

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The *Journal of The Missouri Bar* is always looking for good articles – articles that enlighten your colleagues, keep them abreast of important changes in the law, and help them meet their professional obligations.

If you know of a legal topic or issue worthy of illumination, we invite you to consider preparing an article for the *Journal*. It's simple — just let us know the topic in which you're interested and we'll send you all the materials you need to get the creative process started.

The *Journal* currently has only a small backlog of articles, which means that your article, if approved for publication, will appear in print quickly. That's all the more incentive to spread the word on that "hot" legal topic!

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Let's Get Busy!