

Ethics County

by Marc Garfinkle

When a Lawyer Needs a Lawyer

As a rule, clients call lawyers when they have questions they can't answer or problems they can't resolve. Usually, they want information about the future. They are anxious to know what is going to happen to them. They ask us, "What is the worst that can happen?" "Can I go to jail?" "Will they really fire me for that?" "What's the max I can get?" "Might I lose my house?" "Will my policy cover this?" "Am I going to lose my license?" "Will I be allowed back into the country?" "Can I be held personally liable?" "Can I lose custody?" "Can they really get me for all that?"

When confronted with a problem, clients tend to fear the worst. Particularly those who are new to jurisprudence almost always anticipate an unhappy ending. They foresee receiving the maximum sentence or the worst possible outcome. Although we lawyers know that the worst case scenario rarely plays out, our clients may lose sleep over matters that we know are not worth losing sleep over.

Lawyer/clients are hardly different from lay clients in this regard. When lawyers get letters from Ethics requesting an audit (random or otherwise), an investigative interview or the production of records, our reactions are more likely to be visceral than cerebral. Our stomach drops, our pulse quickens, our brow may moisten. We are thrust into the ethics arena with incomplete knowledge of the system. Since we fear most what we don't know, we imagine that all of our misdeeds, actual or otherwise, will be discovered, and retribution for all of our sins will be exacted.

Lay clients usually have pretty good sense of knowing when to call a lawyer. Lawyers, on the other hand, often delay or resist seeking counsel. Perhaps this is because we have confidence in our own ability to defend and negotiate. Perhaps this is because we trust ourselves to know when the water is getting too deep. Perhaps we are afraid of what an attorney will cost. Some lawyers under fire play ostrich, refusing to come to grips with the problem, and procrastinating until new problems, of their own creation, arise.

To make matters worse, lawyers don't like talking to anyone, particularly to other lawyers, about their ethics problems. They usually don't discuss these issues with partners or colleagues or spouses. If they decide to consult with an attorney, they look for someone they don't know. As with all clients, the sooner they seek counsel, the better they will feel.

Proceeding without the advice of counsel is risky, because we are usually in unfamiliar territory, and the ethics system is unlike our usual forums. The paths to success in the legal ethics system often seem counter-intuitive to lawyers, particularly to litigators. Lawyers need lawyers to demystify the process and to suggest stratagem for success. Lawyers who retain lawyers after having begun *pro se*,

have often caused some unwitting damage or otherwise complicated the matter. There is no negative inference drawn from your having retained counsel. At the very least, your lawyer can say nicer things about you than you can appropriately say about yourself.

Any lawyer with concerns or questions about an RPC, a conflict of interest, an audit, a bounced check, a notice to produce documents, a dishonest employee, a criminal charge, or any other ethics matter of concern should speak to an ethics attorney. The Supreme Court's Office of Attorney Ethics will offer resources and some guidance to attorneys at no cost. They are friendly and accommodating.

For a defense-oriented opinion or representation, there are dozens of experienced ethics lawyers across New Jersey who are happy to speak to troubled colleagues. Make the call. You will feel better for it. Lawyers with ethics issues should not go without counsel. You know what they say.

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