

# OCDC SPOTLIGHT

## Communication, Communication, Communication: How to Market a Law Practice, Satisfy Clients and Avoid Complaints

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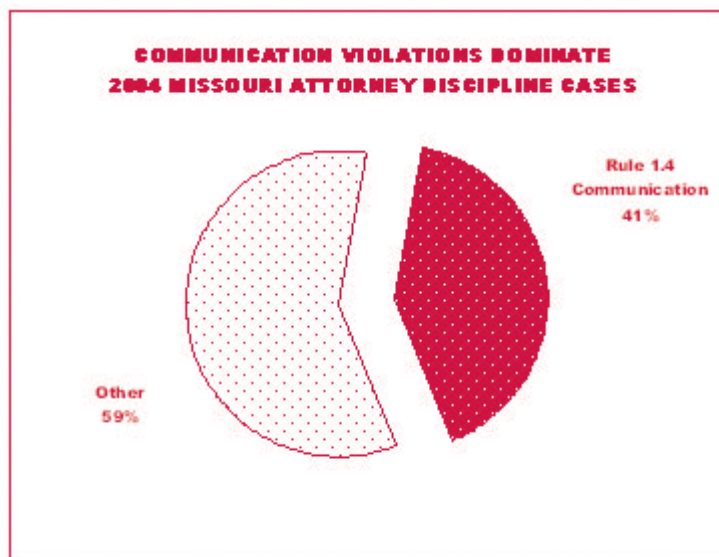
In 2004, the Office of Chief Disciplinary Counsel opened almost 1,000 complaint files against Missouri lawyers. The office received almost 1,500 more complaints expressing client displeasure. The Chief Disciplinary Counsel had no jurisdiction over many of those. Others were referred to fee dispute programs or The Missouri Bar Complaint Resolution Program. Most of those complaints are made against attorneys who are trying to please their clients; at least that is the assumption at the OCDC. Unfortunately, OCDC records reflect that procrastination and inadequate communication are the causes of a significant majority of all complaints made against Missouri attorneys. This article focuses on helping lawyers avoid complaints by keeping clients fully informed. The chart below reflects that 41% of all complaints opened in Missouri in 2004 alleged a failure to adequately communicate.

### **MOST COMPLAINTS RESULT FROM POOR CLIENT RELATIONS**

A 1994 national survey of bar disciplinary staff and professional liability lawyers was conducted to determine a numerical relationship between poor client relations and disciplinary complaints.

The preliminary survey results indicated:

- In 49% of complaints to disciplinary agencies, no rules violations are alleged, but poor client relations and poor practice management are evident.
- In 35% of complaints alleging rules violations, poor client relations arising out of bad management are evident.



- In total, 67.5% of all complaints included poor client relations.

### **COMMUNICATION, COMMUNICATION, COMMUNICATION**

Given that background, the questions become: “What can I do to prevent complaints?” and “What can I do so that my clients will return to me when they again need legal services, and refer their friends and colleagues to me?”

Discussions with highly successful attorneys in private practice who also

regularly review disciplinary complaints reveal a simple answer.

Consider the advice given to a first-time home buyer who wants to know what the most important considerations are in buying a house. To the potential homeowner, most experts (and uncles and aunts) say “location, location, location.” To lawyers hoping to keep

their clients satisfied, and keep the disciplinary counsel at bay, these successful lawyers list the three most important considerations as communication, communication, communication.

The final outcome of a client’s case, like the price of a house, may on first impression appear to be the only concern of many clients. Successful lawyers report otherwise. Clients are more likely to return to a lawyer who did not

procrastinate and who explained each step of the legal process, regardless of results, than they are to return to a lawyer who was impossible to reach and never explained the process, but who accomplished the initial assignment. In cases in which the lawyer achieved the requested result, but never explained the steps taken, the client’s conclusion is likely to be that the client merely got what was due; that is, “justice prevailed.” After all, prevailing parties never wanted

anything more than “a fair shake.” Clients who have been informed about how the legal system works, and intellectually participated in the case, are appreciative of the lawyers’ efforts and are understanding of the lawyers’ fees.

### **COMPLAINTS FREQUENTLY HEARD BY DISCIPLINARY COUNSEL**

The following list contains the most frequently heard complaints about attorneys. The list reflects clients’ frustrations about attorneys’ failure to adequately communicate with them. It should be apparent that each of these common complaints are preventable with a little extra effort.

- “He didn’t return my phone calls” (the number one complaint against all lawyers).
- “She never explained why the case was continually delayed.”
- “No one explained the difference between fees and expenses.”
- “All he ever told me was, ‘I’ll take care of it.’”
- “The secretary never let me speak with my lawyer.”
- “I never knew what she was doing on my case until after she had already done it.”
- “My lawyer and the other lawyer went in to see the judge. They came out and told me my case was continued. Nobody ever asked me what I wanted.”
- “They told me it would only cost \$1,000. It ended up costing me \$3,500. They never explained why.”
- “The only letters I ever received were invoices and even the invoices did not explain what my lawyer had done.”

### **HOW TO AVOID COMPLAINTS**

Several successful attorneys who have also reviewed hundreds of attorney disciplinary complaints as volunteers and investigators have been interviewed for this article.

Environmental lawyer William Session, who has practiced both in large Kansas City firms and by himself,

and who served for eight years on the 16th Judicial Circuit Bar Committee, noted:

“Trust, the stock in trade of any good attorney, is built upon a foundation of good communication.” Missouri Supreme Court Rule 4-1.4 mandates that lawyers effectively communicate both the goals and means by which the clients’ expected outcomes will be reached. The standard of review, so to speak, is not whether the lawyer thinks the level of communication is adequate, but instead, whether a “reasonable client” would consider the lawyer’s efforts sufficient. The vast majority of ethical complaints are rooted in the habit of many lawyers to disregard this rule and its rationale. That rationale is simple. A client cannot make decisions about the engagement unless he or she is informed. The more blatant the disregard, the more likely disciplinary action will follow that attorney.

### **COMMUNICATION FAILURES: THE TIP OF THE ICEBERG**

Listen to retired circuit court Judge Bob Russell, who, in addition to his personal injury and criminal defense practice, has helped many Missouri attorneys and judges respond to disciplinary complaints:

In representing attorneys charged with professional misconduct arising from a lack of communication with their clients, I have found many times that the failure to communicate is just the tip of the iceberg. Particularly where a lawyer has been practicing for sometime without problems of communication, the onset of a failure to communicate may signal deeper problems. Family problems, financial problems, health problems, alcohol and substance problems are examples of things

which may underlie a failure to communicate.

Often I find that attorneys who fail to communicate with their clients also fail to communicate with me when I am representing them. When I represent attorneys charged with misconduct arising from failure to communicate with clients I always ask the attorneys why they have failed to communicate. A frequent reason given is that they are embarrassed about something in the handling of the matter. Unfortunately, that embarrassment builds with each failure to respond to a request from the client.

Good responsiveness to clients’ inquiries and a good communication protocol will help attorneys avoid complaints. No one likes to be ignored. When a client has entrusted a matter to a lawyer, the failure of the lawyer to communicate sends the message that the client or the client’s matter is not important. Understandably that creates discontent on the part of the client and may well trigger a complaint.

Once a complaint is filed with the Office of the Chief Disciplinary Counsel concerning a lack of communication, you can be assured that the complaint will be investigated. The scope of the investigation may ultimately exceed the single issue of a failure to communicate.

As with most things, the best defense to a disciplinary complaint is for there never to have been a complaint. Do not let the process start. COMMUNICATE!

### **COMMUNICATION POINTERS**

St. Louis attorney Joyce Capshaw, who practices in the area of domestic relations, and who has investigated attorney discipline cases in St. Louis County for 17 years, reported:

I can state without reservation that the single most important aspect of a successful attorney/client relationship is communication. Towards this end, I have established a practice of routinely sending clients copies of virtually all correspondence and pleadings involved in their case and, if I am not available to return a client's phone call, I attempt to have a member of our staff contact the client on my behalf.

William Session makes several specific suggestions for keeping clients informed:

There are many techniques successful attorneys use to enhance the flow and effectiveness of communication between attorney and client. The foremost requirement is regularity. This may compel communication not only about what has happened but what has not happened since the last contact.

The lawyer must not only be responsive to requests for information from the client (telephone calls), but also responsive to developments in the representation. Report something material to the client's objectives and expectations from the engagement as soon as is practicable. In other words, be responsive to the engagement as well as the client. Do not wait days or weeks to report important developments even if there is no immediate impact to the objectives of the engagement.

Finally, whenever possible, talk to the client, preferably in person, but at a minimum by telephone.

There is no substitute for this method of communication because it is interactive. As important as letters, status reports and voice-mail messages may be, *listening* to what your client wants to know about guarantees effective communication ... and the avoidance of Rule 4-1.4 bar complaints.

Former Missouri Bar President Jennifer Gille Bacon served on the 16th Circuit Bar Committee for eight years hearing disciplinary complaints. She now serves on the Missouri Supreme Court's Advisory Committee, reviewing and processing disciplinary matters. She says:

Communication with clients is the key to a lawyer's success, perhaps even more than results! Clients can deal with a range of outcomes, from good to bad, regarding their legal matters, if they know what to expect and what is happening. Lawyers are not necessarily unique among the professions in this regard (everyone prefers a doctor with a good "bedside manner"), but because communication problems are the most common reason for client (and disciplinary) complaints, lawyers must pay attention to this critical aspect of their practice.

Law schools do not equip their graduates well for the *practice* of law, but the hallmarks of good communication are fairly straightforward, and should be applied from the time the client walks through the door to the time the matter is concluded. First, *use an engagement letter*, describing the scope of the employment (and what is *not* included in your representation) and the fee

arrangement. These letters don't have to be lengthy, but you should have one in every file. Next, use your docketing system to remind you to send out periodic communications (at least quarterly) with every client, *even if there is nothing substantive to report*. At the same time, return phone calls, even if a staff member does it for you. And finally, send a "disengagement" letter, either when declining representation of a client, or when finalizing or closing a client matter. All of these will go a long way, with very little effort on your part, to creating a contented client. And that, after all, is the goal.

Comments to Rule 1.5 of Missouri Supreme Court Rule 4-1.5 state the obvious: "A written statement concerning the fee reduces the possibility of misunderstanding." It should also be obvious that detailed, written fee agreements which cover many contingencies and explain both fees and expenses prevent complaints and fee disputes.

These suggestions that lawyers should improve their explanations to their clients are not intended merely to encourage "defensive lawyering." Instead it should be apparent that clients are more satisfied with their lawyers when lawyers make greater efforts to explain the legal process, provide them with information sufficient to make informed decisions, and respond to their questions.

What do the experts say are the best tips for marketing a law practice, satisfying clients, and avoiding complaints? Communication! Communication! Communication!