

Client's Expectations

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Managing client expectations is key in avoiding malpractice claims. If the client has unrealistic expectations, do not be afraid to walk away. Never guarantee a particular result or outcome. Ensuring that the client is aware of all reasonably foreseeable outcomes of a meeting, motion, hearing or case is critical in avoiding claims. Sending out large legal fee statements at the end of a case should be also avoided.

A lawyer is subject to discipline for handling a legal matter which he knows he is not competent to handle. Although he may accept employment in an area in which he is not qualified, he may do so only if in good faith he expects to become qualified and his preparation would not result in unreasonable expense or delay to the client. Also, if the lawyer does not expect to become qualified he may, with the consent of the client, accept employment and associate with a lawyer competent to handle the matter. Encompassed within this provision is the lawyer's duty to handle the client's matter competently and not neglect them. (See *In re Gould*, 253 A.D.2nd 233, 686 N.Y.S. 2nd 759 (1st Dep't 1999), finding that an attorney's failure to respond to client's inquiries about the status of her case and, in two other cases, his failure to adequately inform clients that he was not pursuing their claims, constituted neglect and *In re Riccio*, 131 A.D.2nd 973, 517 N.Y.S.2nd 791 (3rd Dept 1987) suspending lawyer for various acts of neglect, including failing to respond to client's requests for information about her case.)

DR 6-101 [1200.30] Failing to Act Competently:

(A) A Lawyer shall not:

- (1) Handle a legal matter, which the lawyer knows or should know that he or she is not competent to handle, without associating with a lawyer who is competent to handle it.
- (2) Handle a legal matter without preparation adequate to the circumstances.
- (3) Neglect a legal matter entrusted to the lawyer.

ABA Model Code of Professional Responsibility – DR 1-102 – “A lawyer shall not ... engage in conduct involving dishonesty, fraud, deceit, or misrepresentation or engage in conduct that is prejudicial to the administration of justice.”

ABA Model Rules of Professional Conduct – Rule 4.1 – “In the course of representing a client a lawyer shall not knowingly: make a false statement of material fact or law to a third person; or fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by rule 1.6.”

DR 1-102 [1200.3] Misconduct

EC 7-4

DR 7-102 [1200.33] Representing a Client Within the Bounds of the Law

DR 9-101 [1200.45] Avoiding Even the Appearance of Impropriety