

THE PDP MONTHLY – MAY, 2023

You're Not A Bus¹

When I was studying for the bar exam the review course I took included a session on ethics. I recall that the presenter had two pieces of advice. The first was that you can answer any ethics question on the bar exam if you remember to say that you will not steal from your clients and/or that you promise to “rat out” your friends. The second was to remember that “you’re not a bus.” The presenter elaborated saying that “just because someone is waiting at the stop and waiving a dollar at you (a reflection of my age, I realize – bus fares were cheaper in those days), you are not required to pull over and provide them service.

At the time I didn’t really understand or appreciate the depth of the statement “you’re not a bus.” But over the years, as I interviewed and screened prospective clients, and talked to lawyers doing the same thing, I came to understand the wisdom and importance of the statement and the nuances associated with it. Indeed, there is much more to professional responsibility than safekeeping your clients’ money and taking your mandatory reporting responsibilities seriously (the latter of which is not “ratting out your friends”). Instead, there are, or at least there should be, a number of considerations for any lawyer when deciding whether to take on a new client.

First, of course, the lawyer must do a careful and thorough conflicts check to determine if there are any **conflicts** between the prospective client and another client, former client, third party, or the lawyer’s own interests (*See* Rules 16-107, 16-108, 16-109 NMRA). This should include obtaining the names of every person possibly involved in the matter; not just parties, but also witnesses who may need to be examined or cross-examined. Software that relies on a robust and complete database is typically the best way to conduct the conflicts check. Long gone are

¹ *This article is provided to members of the State Bar of New Mexico for informational purposes only and is not intended to be exhaustive or applicable to all circumstances. Further it is not intended to, nor does it constitute legal advice to a lawyer or law firm, nor does it establish any type of attorney-client relationship between employees of the State Bar of New Mexico and any person or entity. Further, this article is not a substitute for independent analysis and research by a lawyer or law firm. Each lawyer and law firm are responsible for their own compliance with applicable rules and laws and should consider seeking appropriate counsel for advice.*

the days when a lawyer can or should consider relying on the lawyer's memory for possible conflicts.

But the analysis does not end if the lawyer discovers that there is no conflict, or if the lawyer can reasonably request and obtain consent to waive a conflict. The lawyer should honestly evaluate the lawyer's **competence** to handle the matter. Does the lawyer have the legal knowledge, skill, thoroughness and preparation necessary to handle the matter? (*See* Rule 16-101, NMRA). Likewise, the lawyer should determine if the matter has any **merit**. (*See* Rule 16-301 NMRA). Moreover, does the lawyer have the time and resources, financial and otherwise, to handle the matter **diligently** and, if a litigation matter, in a way that **expedites litigation**? (*See* Rules 16-103 and 16-302 NMRA).

The lawyer must also consider if the lawyer will be able to effectively **communicate** with the prospective client, to include having candid discussions about the **prospective client's substantive goals** and expectations, and whether they are reasonable, realistic, and lawful. (*See* Rules 16-102 and 16-104 NMRA). The discussion should also include the likely **costs and fees** associated with the matter, and exploration into whether the client can afford both the time and financial costs associated with the matter, including in many matters the lawyer's fees. (*See* Rules 16-104 and 16-105 NMRA).

Finally, the lawyer should carefully consider whether **the lawyer can effectively work with the prospective client**? Some might argue this is an important issue often overlooked by lawyers when intaking prospective clients. It doesn't mean that the lawyer and client need to become best friends; in fact, getting too close to a client on a personal level could compromise a lawyer's objectivity and effectiveness. But is the prospective client open and honest about their legal issue, or are they evasive and defensive? How realistic is the prospective client about their situation and their desired outcome? How did the prospective client treat the lawyer and the lawyer's staff when first making contact and during the initial interview; were they relatively pleasant or were they dismissive, confrontational or simply abusive? Has the prospective client worked with other lawyers, why are they no longer working with that lawyer, and did the prospective client spend a good deal of time denigrating that other lawyer? Ultimately, even if the legal issue is extremely interesting and the lawyer is

eminently qualified to handle the matter, if the relationship with the prospective client appears to be one that will be rife with unpleasantness and difficulty, it's probably not a representation the lawyer wants to undertake.

In short, there may be a number of reasons why a lawyer might pass on representing a prospective client; it may be based on the Rules of Professional Conduct, or it may be based on a lawyer's desire to avoid working with a client whom the lawyer believes the lawyer simply cannot work with. So, the next time that particularly unpleasant, difficult prospective client appears at the bus stop wildly waving a bus pass and demanding your attention, remember that there is no requirement that you pull over and offer legal services; after all, you're not a bus.