ETHICS AND PROFESSIONAL RESPONSIBILITY

Getting Off to a Good Start With Your Client

By Robert McAndrew
McAndrew Vuotto, LLC

In order to be well-informed of your responsibilities and avoid either an ethics grievance or a malpractice lawsuit, you must be well-versed in the Rules of Professional Conduct (RPCs), promulgated by the New Jersey Supreme Court. Here is a look at the rules regarding scope of representation and fees.

RPC 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

This RPC makes it clear that an attorney must abide by the decisions of the client with regard to the scope and objectives of the representation, including whether to settle a matter. RPC 1.2(a). However, your representation of a client does not imply that you endorse the client's views. RPC 1.2(b). In addition, you may limit the scope of your retention so long as it is reasonable, and the client gives informed consent. RPC 1.2(c). Although the RPC does not specifically state, as a practical matter it is hard to see how one would prove this unless the attorney has put it into writing and the client has given written consent. Finally, you are clearly not permitted to counsel a client if the client intends to engage in criminal, fraudulent or otherwise illegal conduct. RPC 1.2(d).

RPC 1.5 Fees

"A lawyer's fee shall be reasonable." RPC 1.5(a). This is the most important directive regarding any fee arrangement. The RPC set out eight considerations any fee arrangement must meet in order to be considered reasonable. For instance, if the matter is being billed on an hourly basis, the hourly rate must be reasonable, the total number of hours devoted to the matter must be reasonable and the total fee must be reasonable. When you have not regularly represented a client for similar services, a written explanation of the basis for the fee must be given to the client within a reasonable time. RPC 1.5(b). This is commonly referred to as the retainer agreement. It is wise to combine the information agreed upon pursuant to RPC 1.2 with the fee information required by RPC 1.5 into one coherent retainer agreement. The requirement of "reasonableness" applies whether the fee is hourly or contingent. If contingent, the writing must explain how the fee will be calculated. RPC 1.5(c). However, a contingent fee is prohibited in certain types of cases, such as criminal matters. *See* RPC 1.5 (d).

When in doubt, do not hesitate to seek advice from an experienced attorney, preferably one having a background in ethics.

WRITER'S CORNER

Concise-ly is Not Nice

By Gregory D. Miller
Rivkin Radler LLP

There is a reason legal arguments are written in "briefs." Shorter is better; less is more. Following these principles is critical to persuasive legal writing. Drafting an argument without page limits is easy. Taking that same argument and reducing it to half its content without losing any advocacy is difficult.

Below are several tips to keep in mind in drafting concise and persuasive arguments.

Do not start before you know the end. A common mistake is launching into drafting a legal argument before outlining or at least thinking about what you need to accomplish. Before writing in earnest, it is important to understand with specificity what you are seeking to convince the reader of and each fact and legal basis supporting your argument. Starting with an outline provides direction and makes you less susceptible to including unnecessary filler.

Provide a roadmap. The reader wants to understand up front what you are seeking and why. It is a simple concept that often is forgotten. Succinctly stating what you want and the bases for it naturally helps set up a clean, flowing argument.

Know your audience. Your emphasis and structure often is influenced by your audience (*i.e.*, trial judge, appellate court, mediator, client, etc.). What is important to one reader is not necessarily important to another. Think about these differences and whether you need to change your focus depending on who you are trying to convince.

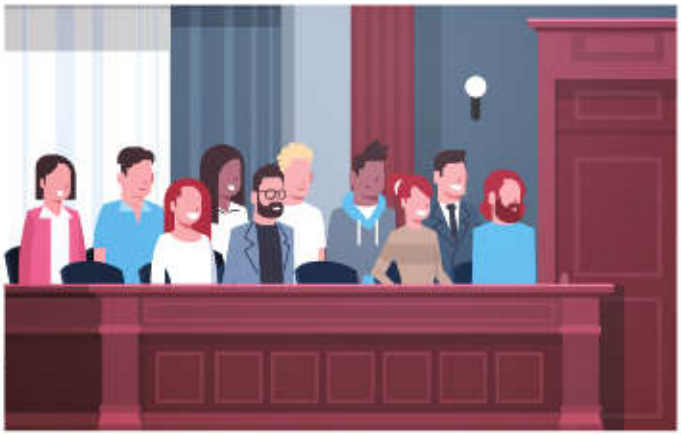
Use bolding, underlining and italicizing sparingly. They can be effective if used properly, but if every other sentence is using one of these forms of emphasis, you greatly diminish the impact. If everything is important, nothing is important. Write a concise argument instead, and you will find less of a need to add unnecessary emphasis.

Drop adverbs. Try to avoid using adverbs, and make sure to carefully avoid splitting infinitives with them (see what I did there?). Sprinkling in flowery "ly" words detracts from an argument. When used sparing*ly* adverbs can be useful, but typical*ly* are unnecessary.

Limit unnecessary transitions. Limit transitional terms such as "furthermore," "additionally," "moreover," "whereas," etc. A concise, powerful legal argument naturally transitions from argument to argument. The use of transitional words to introduce paragraphs or concepts is unnecessary.

Make every word count. Revisions play a significant role in the writing process. When reviewing your work product, make sure each word has objective meaning and is needed. Whether you understand what a term or sentence means is not the test. Rather, it is the perspective of your reader that counts. If it does not make sense objectively, it needs to be revised. If words or sentences do not strengthen or detract from the argument, they need to be revised or dropped.

Employing these concepts will help you draft short, clean and persuasive arguments. Concise is nice. Concisely is not.



WORKING WELL

It's All in How You Look at Things

By Anthony Murgatroyd
Murgatroyd Law Group, L.L.C.

Employing certain strategies to restructure my thinking process helps me enormously in depositions and trials. If I feel a bit wound up, I make a conscious effort to slow down my response. Slowing down your performance in a task that requires judgment, decision-making, and problem solving skills (like trial work or depositions) improves the soundness of your thinking and judgment.

It may not initially feel comfortable to pause silently in front of an adversary in a deposition, or a jury during a trial, but in time I've found that there is power in getting comfortable with owning the silence. Pausing and becoming grounded means you have control over what you say and when you say it. When you can get comfortable with that self-imposed moment of silence, it can be liberating.

Whenever I find myself feeling anxious before a speaking event or a trial, I try to remember that my nervousness almost always means I'm worried I may fail in some way. To keep those concerns at bay, I try to view the situation not as a crisis, but as a challenge, or a sharing opportunity. Remember, people coming to see you speak at a seminar really are there to hear what you have to say. When it comes to a trial, if you've done your job properly and picked a fair jury, they want to learn the facts and get to the truth as much as you do. While it may be tempting to think you are being judged, the fact of the matter is that neither the judge nor the jury are there to judge the attorneys; they are there to judge the *case*.