

# Popular Threads on Solosez

## Unresponsive Lawyer (morphing into Closing the File)

I contacted a lawyer in another state on behalf of a client, spoke with him by phone, and explained the case to him. He seemed amenable to taking the case and said that he was going to see one of the parties on the other side later that evening and that he would approach him on the subject. He was to contact me to tell me what he would recommend for a course of action. He claimed to have no conflict or hesitation to sue the other side.

Not only has he not called, he will not return email or fax correspondence. I am not willing to speculate, nor does it really matter, why he is not returning calls. My client is considering filing a complaint against the attorney with the bar in that state. He accepted confidential information and did who knows what with it. How would you advise my client?

Mike Phillips, North Carolina

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Drop the dime.

Incremental de-jerkification of the profession is the constant mandate for us all.

Jim Moriarty, Iowa

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Personally, I would let it go. However, I would keep all of the correspondence, etc. and keep it in case you have use it to conflict out the attorney should he show up representing the other side. Further, you should document what you told him so that the information can be kept out due to privilege should it suddenly show up in the other side's hands.

Good luck,

Frank J. Kautz, Massachusetts

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How long has it been, Mike?

Gini Nelson, New Mexico

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Three weeks.

Mike Phillips



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I'd sent certified expressing the concerns you state and indicating that he has incurred an obligation--at least--to respond. Depending on result file Bar complaint. The is a limit to tolerance.

John P. Page, Florida

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What are the regulations on responding to clients? I have a client who I believe I have completed business with who continues to contact me. Am I obligated to respond to each and every inquiry?

Coral Gunter

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Not if you send a disengagement letter. If they're following up on the prior matter, get a retainer and bill each telephone against it.

Mike Phillips

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Here generally 30 days after the last hearing on the matter you are no longer the attorney of record. I \*try\* to send clients a closing letter at the end of my representation.

Jane E. Tate, Hawaii

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Speaking as someone who on occasion gets 300 calls a day, there are a number of reasons for slow response at times. Not having heard that the lawyer has been retained, signed an employment agreement or been paid money, I would not push the issue beyond tracking through the source on any concerns about future release of confidential information.

I would proceed to hire a local lawyer and have him try to resolve case at bar, if the first lawyer was not hired. Should one convey confidential information to an attorney prior to conflicts check and signed agreement? Was that what occurred here? Knowing that he intended to see the other lawyer at a social function, was it reasonable to expect all facts and information to be kept confidential, or was some level of discussion sanctioned? Knowing that he would see other lawyer at social function, was it reasonable to convey any information without a formal signed employment agreement? Just playing devil's advocate.

I do think the client is overreacting unless there was definitive employment by the client of the attorney. It appears error to send information to someone not hired. If the client definitively hired the attorney, nonresponsiveness is an issue. If the client only sent information that can be classified as an inquiry, it would not appear to be a matter for the disciplinary authorities to my view.

Darrell G. Stewart, Texas

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When I open a new file, I put a case management form in the front of the file. The form has a File Closing section at the bottom; two of the tasks are to formally withdraw and to send a closing/disengagement letter. It's not so hard, it's a form letter that I add to and delete from, and it clarifies for the fuzzier clients that the decree and the order granting withdrawal mean I am not the attorney any longer, that they can obtain additional copies of docs from the clerk, blahblah. I also tell 'em I'm using the file for kindling five years from today.

I'm happy to answer one mythical Quick Question. If the person keeps calling, I ask if s/he wants to reopen the matter and retain me again to handle some new stuff. Usually they suddenly discover they're competent to talk to the other parent without me. The closing/disengagement letter helps draw the line between then and now. Carolyn J. Stevens, Montana

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Something I do on closed files in complicated cases (or some other issue) is a memo to the file. It goes on the very top, after the closing letter, and it tells me, at a glance, what I really, really, really need to remember about the file if I ever have to reopen the file folder.

For example, last year I had a case that was just a grievance looking for a place to sit down. Mind you, I did *\*two\* \*separate\** probates in under thirty days from opening interview to closing letter on the second file (and refund of left-over fees), but somehow, I was "neglecting" the client.

Anyway, she had mentioned at the time that she hired me for the first probate that she wanted me to do additional work (in particular, estate planning for herself). After she hired me on the second matter the following week, and then went psycho, I resolved that I would NEVER work for her again. Also, I was a little concerned that she might decide at some later date to grieve me. She had no cause, but angry people tend to stay angry.

I have a tendency to forget the pain if I don't write it down. So, I documented the file extensively (two or three type-written pages). I also documented her TM contacts info before I archived her.

Not that I recommend this level of documentation for every file, but it can never hurt to do a ten or twenty line summary of the file, just in case someone else picks it up later, or you pick it up five years from now. For me, it's more important to write down the dynamics of the relationships than the legal info--the legal info can be reconstructed with research and/or just reading the file, but the relationships may be lost in the fog of memory without a memo.

Becki Fahle, Texas

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Here we don't have to formally withdraw. 30 days after the final order we're out. I say I \*try\* because being that I am truly solo this is one of those things that I get behind on.

Also, my engagement letter clearly defines what it does not include (ie. appeal, collection, other post matter assistance, etc.) & that those situations will require a new engagement.

Jane E. Tate, Hawaii

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Have you tried calling Randall Terry, Tom Delay, Congress, etc.?

Jeff Molenda, West Virginia

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Yes, I understand all three of those reasons. We have a local rule covering automatic "release of counsel" rule that releases an attorney after final disposition and time for appeal has expired, and the attorney serves a notice of termination. Of course, you send a copy of the Notice of Release to the client.

But rewind to the beginning of an average domestic relations case. You give the client a clear service agreement, you sometimes even go through it paragraph by paragraph with a client, you ask if s/he has questions about it. You write clear letters, to talk to the client at the client's level of understanding. You and the client maintain regular contact. Even so, how many times do you have to repeat the same things at least once, sometimes twice, sometimes more? To a person unfamiliar with legal stuff, it's all new, confusing, and too much to retain. I can safely bet that, by the end of the case or time to withdraw for another reason, my clients have forgotten what the service agreement or engagement letter says about scope of representation and withdrawing. That's why I send the letter, and it includes a reminder of the client's responsibility to keep the Clerk informed of changes in contact information because the Clerk will no longer contact me.

And believe me, I understand about solo-no-staff case management. We "true solos" have to attend to administrative details as they arise, otherwise we'll be inundated with undone details. I get busy and tend to forget the "it's just a" admin details, too. That's why I have a routine/protocol with each file. The more routine I can make it, the better it is as a memory jogger. I let it slide from time to time. I'm at a place right now where, if something happens that requires another attorney to step in, I will be hugely embarrassed at the disorganization of my office. Too many things have happened in too short a time for me to keep up and I let slide some of the routine administration of individual case files and general office organization. Like a frog in cook pot, I didn't notice the individual "It's just a" notes until I had a pile of stuff to take care of. As a result, my office is in a condition on par with a horror movie frat house. I'm taking care of all that now as part of the end of month billing. I have to make the reminders enough of a nuisance that I'll stop telling myself I'll do it later.

When you're tempted to let it slide, call your sponsor who will nag you like a mother until you get back on track. Call 1-968-766-8437. Call now. Operators are standing by. That's 1-YOURMOTHER.

Carolyn Stevens, Montana

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I'm not telling cj to do this. Or anybody. But i've found this works on closing files rather well, especially when you've let it go for a while, and just need to get the damn work out.

One way to solve this, that does not involve a computer,(well, okay, the first part does), and so goes very fast:

1. Type up a "check-box" type form \*for the client.\* It can say things like,

This office created this form so that we can get information to you fast, rather than pretty. Cause no.: \_\_\_\_\_ Court no.: \_\_\_\_\_  
Type of matter: \_\_\_ divorce \_\_\_ TRO  
\_\_\_ custody adjustment \_\_\_ alimony termination

This case is now closed. The last hearing was on \_\_\_\_\_. I have formally withdrawn [or the court automatically terminates our attorney client relationship on \_\_\_\_\_]

\_\_\_\_\_ Not all of your retainer was used. A refund of \_\_\_\_\_ is included via IOLTA check # \_\_\_\_\_. \_\_\_\_\_ All of your retainer was used. No refund is forthcoming.

Because I no longer represent you, you must keep the court clerk apprised of: \_\_\_\_\_ xxx \_\_\_\_\_ yyy \_\_\_\_\_ blank line here

Your file will be sent to storage on \_\_\_\_\_. It will be destroyed five years from that date, unless you come by and get it before then.

\_\_\_\_\_ If you need to ask One. Quick. Question. you may call my office. Once. \_\_\_\_\_ Any additional questions will require payment of an additional retainer via phone check draft before you ask the question.

\_\_\_\_\_ All questions will require an additional retainer via phone check draft. \_\_\_\_\_ Don't ever call my office again under any circumstances.

etc., etc., etc.

2. Make fifty copies of the form. Put them all in one place.

3. When you get to the very last day, instead of having to open a computer file and make a draft, being tired and all, you just pull down a form, check the boxes, make a copy, hand-write a check if necessary, hand write an envelope, and stamp. No screwing around with technology, no down time while it decides to crash, no changing the printer ink cartridge. It's amazing how very much faster paper can sometimes be over the computer. Not pretty, but FAST.

Not always. But boy, for closing files fast and getting the closing check-

box form out, the computer is definitely overkill.

4. Variation on a theme for those who believe the above is too unprofessional--fill out a check box form, and then have your teenager or your spouse or your VA actually create the closing letters. That way, you don't have to do much in the way of thinking and it still gets done to your professional standards (by someone else who messes with the printer cartridge and the crashing computer), while you spend your time putting out the nastier fires that are smoldering underneath the notes.

Becki Fahle, Texas

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Ida know. Having your teenager handle my file doesn't sound like "professional standards" to me no matter how stellar your teenager might be.

My closing letter has the same information as your form. Takes me about 5 seconds to call it up on the computer, maybe another 20 seconds zip through it block deleting the boilerplate paragraphs I don't want. Then I might spend another five minutes to include information specific to this client's case and make a personal comment or two about the case. I do one last bill or "accounting" if the client is paid up. I include a printout of the client trust account. I write the check. I edit the client's account from active to inactive. I move all the paper financial information to the client trust account file. If I'm really too tired to give the client the ten minutes of human attention that s/he deserves, I'll save this job for the first job of the next day, or Friday afternoon when I do admin catch-up. Do the letter, strip the file, return originals and other docs that go back to the client, stuff the rest into a storage folder, stash it in the proper slot, enter the closing info into the computer conflict list. I like the sense of proper closure, and I like knowing that personally walking through the process allows review time that my teenager wouldn't do -- have I forgotten something? Yes. Client gave me an audio tape of phone calls from the Skank formerly known as Babycakes, the Court still has it as evidence. Remind the client that the Court will send notice to retrieve or they'll pitch it.

I think clients appreciate that this isn't a "couldn't wait to dump me" process.

Carolyn J. Stevens, Montana

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LOL, I can so identify with that statement about the office! I've been there a year now and new clients come in and say "oh are you just moving in?". I think I need a week just to work on the office, then a week to work on the files. If I could find someone to rent the additional space in my office I just might be able to afford to have someone come in for 10 hours a week or so to help organize the files. That would help immensely.

Also, FWIW I haven't really run into the problem of client's not understanding when the representation is over or it's scope. I get the odd phone call from a former client to ask a question, but that's about it.

Jane E. Tate, Hawaii

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The sad thing about this entire thread is the original topic. Not when representation ENDS, but how/when it STARTS.

The original question was about the advisability of filing an ethics complaint against a lawyer who didn't return calls, where the representation never even began. No retainer. No retainer agreement. But this unknown lawyer may get an ethics complaint nevertheless.

May it never happen to any of the partners of SOLOSEZ.

Charlie Abut, New Jersey

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