

## Opposing Counsel Stopped Responding

---

Solo friends,

I have a conundrum - in a divorce matter, opposing counsel has stopped responding to my calls, emails and faxes. I'm at the point where we're negotiating the support agreement, and I'm considering sending him a fax and email telling him that I'm going to go directly to his client due to his lack of communication. Wrong move? Right move? I hate to file an OSC when we're in the middle of amicable negotiations.

Thanks in advance.

---

Wrong move. He's still the attorney of record. Don't risk an ethical violation by bypassing counsel.

Bring the problem to the Court's attention and ask for a Status Conference (or something similar). Let OC explain to the Judge why he has been incommunicado.

My \$.02.

Scott Barer, California

---

How about sending him a letter with your terms, and ending it with something like, "If I do not hear from you by X date and time I will assume that you agree with the above terms, and will file same with court."

Christian Zinn

---

Speaking as a secretary who just got rid of another secretary for failing to route mail appropriately and pass on phone messages (among many other things), I'd suggest calling the lawyer at home, if you're on amicable terms, and just ask if everything's ok because you are leaving messages and sending faxes and mail, and it isn't like him to fail to respond. He may be facing a challenge of some sort, or his office may not be running as it should. This secretary suggests giving him the benefit of the doubt unless he scolds you for calling him at home. You can add this effort to the list of other avenues you've tried in the event you have to do something more serious. And if there's another lawyer in his office, maybe you could leave a message for that lawyer to call you, or approach him the next time you see him out somewhere.

Marilou, a nonlawyer who'd like to choke the former secretary (who wanted to be called a paralegal but didn't know how to do anything)

---

## SoloSez Popular Threads, November 2012

---

This would be a very bad move. Perhaps you could send him a letter by first class mail asking if there is a reason he is not responding. It might be a valid reason (serious medical emergency), a semi-valid reason (client not paying), or improper reason (out of country because of overdrawn trust account). In any case, the State Bar won't care about his reason when it comes to your disciplinary matter.

Also, let him know by letter that you want to avoid getting the court involved but will need to do so if he doesn't timely respond.

Bert Krages, Oregon

---

I agree don't contact client. Send certified letter and wait a week. Then contact the judge.

Bobby Lott

---

That would be assuming this attorney has a secretary.

Lesley Hoenig, Michigan

---

I was recently involved in a case where OC went totally MIA, for months. Letters, emails, messages on his voicemail didn't help. One day I called and asked the first person who answered the phone if he was still with the firm. I was told that a partner had died and his caseload was overwhelming, but yes he was still with them.

Although that obviously made all more understandable, later he was still MIA with many other excuses, some very very odd, so the feelings of sympathy on my part dried up. That is beside the point I want to make, which is you could call and ask anyone from receptionist on up the simple question of whether the person is with the firm, then explain why you are asking. There may well be a very good reason, especially if you have been on good terms so far.

Donna R. Ireland  
\*\*\*New Jersey Paralegal

---

## SoloSez Popular Threads, November 2012

---

There was a book of New York Magazine puzzles titled, "Maybe He's Dead". I know that sounds cold but how do you know he's either alive or well?

Last year I was lucky enough to have co counsel that knew there was something up when I wasn't my usual nutcase about returning calls and emails. So they called my cell and the wife answered. So, if you don't know him well enough to have his cell or home number perhaps there's another lawyer you know that does if not try to see if the bar association can find out.

I know I never thought I'd be in a coma for 2 + weeks. So, ask around.

John Davidson

---

What they said...

As one who has occasionally had the "perfect storm" of deadlines, discovery, drafting, etc., hit unexpectedly, only to be accompanied by a strange surge in referral calls, e-mail inquiries, a sick Mom, a sick dog, etc., I'm sure I've had people wondering if I'd died or joined a monastery. I have no admin support, so when I get snowed under, sometimes I can sit in the office returning phone calls until 9 or 10 pm, and still not seem to get caught up. Active matters get priority, so while I've occasionally returned a PC call 2-3 weeks after they left the message (and sometimes, they're still looking for someone, or waiting patiently because someone told them I was worth waiting for), I generally try very hard not to let active matters fall more than a few days behind. Operative word here: TRY.

That being said, when I wasn't able to make a discovery deadline, and OC said, "Get it to me when you can" (it was a relatively small matter, not time-sensitive), the response didn't go out until several weeks later...

-Rick

(Who wants a paralegal or a competent administrative assistant for Christmas.

And you really don't to prepay more than the first quarter's salary ... really.

I'd feel beholden if you overdid it.)

Richard J. Rutledge, Jr., North Carolina

---

I was recently guilty of ignoring opposing counsel's calls, letters, emails, etc for several weeks in a family law matter. To make a long story short, my client was not giving me any direction as to how I should respond to counsel's requests (counsel wanted to know when his client would receive \$\$ from my client) so I ignored opposing counsel to stall for time until I got clear guidance from the client. In that situation, I think OC should have written me a letter saying he unsuccessfully tried to reach me on such and such occasion, and that if I dont respond within x days, then he will take x action and ask the court for sanctions.

I think you need to cut through counsel's stalling and force him to respond either to you or the judge and dont worry if he will be offended, or if it will hurt settlement talks.

-Matthew Rosenthal, California

---

What mathew said..personally I believe oc is waiting to get paid before moving forward, afraid of getting stiffed. I've never done that but believe that is the case. Move the case, set a status conference, motion for support or whatever is next...

G alba, Florida

---

Never go directly to the client, unless there is a Court order to do so. The only way I think a Court order would issue if counsel and client failed to appear in Court.

It was mentioned I think to send a proposal and indicate that if no response it will be reported as accepted. This too is a "no, no." You cannot report to the court an agreement without affirmative accepting. The judge will likely be looking down upon you for attempting some "trick" when it backfires.

Besides civility, what obligation does OC have to contact you? Is there a court order in place ordering that OC contact you? Generally not. The matter is in court and while you wish to negotiate a settlement, but can't, you need to move forward. Send some discovery, etc. Requests for admissions tend to be a good choice in this situation.

All you can really do is move the case towards trial and at some point OC will have to respond.

---

Phil A. Taylor

---

## SoloSez Popular Threads, November 2012

---

I agree with Phil on all counts. Absolutely do NOT go to his client. You'll be way out of order there, communicating with someone who is represented by counsel.

Also, it's not clear how long oc has been out of communication or whether there is some particular reason you believe he is under an obligation to do so (the circumstances were not clear from your initial message). I mean, are there discovery responses outstanding? If that's the case, move to compel. Otherwise, if he doesn't wish to communicate with you (perhaps his client has no interest in negotiating a settlement), you'll see him at the next court date . . . or not. If not, then the judge can help you take it from there.

Amy Salberg

---