

## Saying No to Professional Courtesy

The saying that "no good deed goes unpunished" ought to be engraved on my forehead. I am frequently contacted by colleagues who need "a favor". I generally try to help out when I can. It is a very small legal community and most folks expect you to help them if they ask.

The problem is that I have been burned repeatedly helping people out. I don't want to be rude, but I don't want to help anyone for free anymore.

About two weeks ago I got burned sponsoring a colleague on a pro hac vice admission that blew up and I ended up stuck with a case I hadn't been paid to take. I have a whole host of stories that have ended badly for me.

Today I got a call from a colleague's paralegal. It seems that the colleague retired without making provisions for about 5 ongoing cases. There is no money to pay anyone to sub-in. There was clearly the intimation that I would say "oh, just send the files over." I didn't and the call got chilly fairly quickly. I agreed that they had a problem and wished them luck in finding a solution.

Five years ago I would have told him I would do it, but now I just want to be left alone. I don't bug people for favors unless they are among my closest friends, and then it is often a quid pro quo. However I find that when I say no, I get the distinct feeling that I am damaging a professional relationship.

So how do you say no to something that someone expects you will agree to do, without damaging the professional relationship?

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If people are continuously asking you to do free work, it is NOT a professional relationship, they are scamming you.

Larry Frost, Minnesota

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I was burned once, pretty badly, and haven't been since then because I refuse to "go there" anymore. I was asked by an attorney friend to help another attorney (he had just been discharged from the hospital, older attorney on verge of retirement that just needed pointers on new adoption of portions of UTC, etc.) in providing advice on certain trust provisions. He received a \*lot\* of my help, and said several times that he would pay me. Of course I did not get any of this in writing, of course he never paid, and of course I did not pursue because of our mutual friend. This person told our mutual friend how helpful I was, that I basically drafted the trust. (Never again.)

Julie S. Mills, Ohio

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Answer: You say "No."

Or you could say, "I'm sorry, I'm swamped with other work." Such callers know very well that they are imposing. As Larry says, they are trying to take advantage.

Norman R. Solberg, Japan

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Professional courtesy is the occasional chat on the phone helping someone think through issues, or perhaps a one-off court appearance that does not involve litigating (e.g. docket call or presenting an agreed disposition to the court, particularly if you're already going to be in court that day). It does NOT involve taking over a case for free. A lawyer retired with cases still open and no funds left to pay for them? Then if he wants someone else to handle them payment should be coming out of his retirement fund.

That last scenario is particularly galling. There may be no quid pro quo with professional courtesy but there is at least an expectation that they would be willing to return a favor later. To ask someone to help you get out of the profession when you've never done them a favor to start with, and now never will, is pure arrogance.

Kevin W. Grierson, Virginia

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What Kevin said.

My go-to response - I carefully manage my caseload to ensure that I am able to devote sufficient time to each matter. I regret that my current work flow does not permit me to take on your matter at this time. Surely you can appreciate that and you would not want me to accept your case under those circumstances. Then provide numbers for bar referral services (state and local). If you have any concerns about being heard, send a letter stating the same and for the re: use non-engagement.

Deb Matthews, Virginia

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I think I need to practice this. I am always caught off guard when I am asked. Saying no does not come naturally. I am extremely good at it with clients and with my husband, colleagues are tougher.

The pro hac vice ones are the most difficult because these people are certain that there is no imposition because they will do ALL the work. I won't have to do anything, so what's the problem? In a way I am kind of glad that I got burned on the last one because that gives me ammunition to say no forever, unless the circumstances are unique and there is payment for the service.

Michelle Kainen, Vermont

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I have never practiced in a small town, so my view may not count. But to me professional courtesy is a phone or office (usually phone) conversation that lasts maybe 10-15 minutes at most; occasionally followed up with sending some example documents over by email. Done. The Examples you cite go beyond professional courtesy to me.

Shell Bleiweiss, Illinois

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The idea that a paralegal expects you to pick up cases because the last attorney failed to plan, and do it without payment, is absurd. If her feelings were hurt after you said no, then she had unreasonable expectations.

Justin Meyer, New York

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And not to be disrespectful to the paralegals on this list, but if an

attorney wants you to do a favor for him, retired or not, she can damn well do you the courtesy of asking for the favor herself rather than making her staff do it. It's not the paralegal's place to ask you for a professional courtesy.

I actually feel bad for the paralegal. I'm sure he/she didn't enjoy making that call to you. That's not to say that you should have accepted, Michelle, but I think the attorney put both of you in a bad position--the paralegal of having to ask, and you of having to say no to an unreasonable request.

Kevin W. Grierson

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My approach has always been to say no. People who actually appreciate your professional services will also understand that you have other restrictions on your time and availability.

The last thing you want your colleagues to believe is that you are a pushover, more concerned about what they think than the matters you take on. When I started (many years ago) doing litigation, I would occasionally be threatened (usually by a big firm lawyer) that they would badmouth me to the local bar. Generally I came to see that as a badge of honor, as the lawyer could not address the matter substantively.

There is an old saw about, arguing the facts, arguing the law, or just attacking the lawyer if you cannot do the other two. In litigation, I have shown that to be true.

There are a few reasons I would actually help in this scenario. If I had a long-standing personal relationship with the lawyer (such as extensive help when I was starting out, a mentor relationship, or a former law partner where relations remained cordial), then an individual obligation might exist. If there was a sudden and unexpected tragedy, I have seen a group of lawyers step up and help (community response). Sometimes it is informally coordinated by a judge or state bar person in those instances, which is another reason to go along with a group effort.

Darrell G. Stewart, Texas

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On the pro hac vice matters, make it a policy to get a reasonable retainer. Even if the other attorney says that he or she will do all the work, make it a point that you are not in a position to judge the client and are not willing to put yourself at risk of getting the short end of the stick. If they don't want to ask the client to put up a retainer, then politely tell them that another local attorney might be better in this situation. Usually they will come up with a retainer. Also, Oregon used to have a statute that said an attorney was liable for paying a cost award entered against the client if the client was out of state. This was another reason to have money in the trust account.

Also, as others have said, I don't think asking another attorney to work for free is really professional courtesy. Getting a quick opinion on a situation would qualify, as would being reasonable about extensions and scheduling. In many ways, fostering a reputation for professional courtesy can work to the benefit of your clients. The key is distinguishing between reasonable and unreasonable requests.

Bert Krages, Oregon

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My definition of professional courtesy is a little broader than most have described. Several years ago, when I had major surgery, I was amazed and very gratified at how many of my colleagues were willing to help. Hearings I was not able to change got covered, opposing counsel without exception were agreeable to move things, judges also. One colleague even took my place at a mediation! And one list member drove down and brought me prepared food. Really above and beyond. It was very much appreciated and I hope I thanked everybody appropriately. That kind of request I am always willing to accept. Recently, opposing counsel needed to change a hearing because wife was going into labor. That's a no-brainer. Then again, when baby died right after birth. Heartbreaking, but no brainer to agree to change hearing date (as long as it does not adversely affect client; usually does not, except for post trial motions to make sure judge still has jurisdiction). Counsel is sick, etc. I will take their word for it until given reason not to believe them and agree to change dates or a continuance. If a colleague needs a hearing covered, happy to do it. But usually it is someone I know who has helped me out or is a friend.

Sharon Campbell, Texas

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Took the words right out of my mouth, Kevin. When I read that, my first thought was why the heck is the paralegal calling?! Rude as well as disrespectful on the part of the other attorney.

Original Poster, you didn't indicate the gender of the attorney, but might we have an older male attorney who might have a problem respecting females to the point of thinking that he can get away with his FEMALE paralegal requesting assistance from another FEMALE attorney?

Lyza L. Sandgren, Paralegal (not an attorney), Georgia

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Darrell's approach works for me, too: "My approach has always been to say no. People who actually appreciate your professional services will also understand that you have other restrictions on your time and availability." If you're already at capacity, the answer should be automatic. If you could manage another paying case, at this point in my curmudgeonly career, I would visit the colleague's office and review the file.

Nope, no, nyet, do not do me the convenience of sending the file to me to review.

CJ Stevens, Montana

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Believe it or not, I get a bit uncomfortable asking for advice on this list. I try to refrain from calling friends to ask questions, though I do, but not without much back and forth of "should I/ should I not".

I cover hearings for other attorneys, and sometimes it's for local friends if they have a conflict. I don't do it on a quid pro quo basis. Those aren't favors, those are hearings and require some preparations (even if for only 5 minutes), enduring whatever wait time there might be, etc. The unspoken rule is that I get paid what they get paid by their client; I pay

what I get paid by mine when I need help. Dropping something off with the clerk is a favor.

I think you just have to learn to say no, nicely. :)

Barry Kaufman, Florida

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This type of thing is RAMPANT in my practice area (traffic and misdemeanor defense). It's extremely common for lawyers to double or triple book, then try to get someone else to actually handle the actual trial for them. And the clients usually never know that someone else actually handled their case.

My personal rule is that I don't do that unless it's a true emergency (illness, car broke down, etc). If someone just over-committed themselves, I might stand in for a continuance, but that's it. I'm definitely not handling the case that I could've had so they can get paid for it. If someone is a truly close friend, I might do more (like stand in for a plea agreement that's all worked out).

In one case, I agreed to handle the trial for a small appearance fee. It took me MONTHS to get the attorney to pay me. Absurd.

I just agreed to handle a continuance for someone who was overbooked. And then the attorney asks me to do some discovery for her with the prosecutor. Nope. Ain't gonna happen.

I regularly turn down cases to make sure I can meet my commitments. It drives me nuts when others fail to plan ahead then want me to pick up their

slack.

Andrew Flusche, Virginia

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Slight plot twist. Got an email from the paralegal this morning asking how much I wanted to take over the 5 cases. He gave me the case numbers so I could look them up on PACER and see where they were at. I don't know if the number I will arrive at will satisfy them, but at least it's a start.

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Sharon's post broadens the issue to accommodating opposing counsel. My rules for that are pretty broad. Professional courtesy to opposing counsel is part of our aspirational code of conduct here. Besides it is a good business and professional practice, unless the opposition is one that is all take and no give, deceptive or otherwise negatively noteworthy.

Lawyers that call (or their legal assistants) and EXPECT me to do something for them without compensation, feeling offended if I do not, are going to be restricted. I freely offer advice to other lawyers, here and on other listserves, along with telephone consultations with those that know me. I frequently provide forms or prior filings to those I know well, and view it as a part of being a professional. If a friend is in a bind, I would try to help out due to personal dealings. I am skeptical about anything that would put me at risk with a court or someone else's client, however, and the original post seemed to be one who is being taken advantage of beyond professional courtesy.

Darrell G. Stewart

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Before you review the files, if they are bad enough for the guy to retire,  
I can see that they are DOGS from here!!!

Jim Pardue, North Carolina

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My standard response to something like that would be:

"Thank you so much for thinking of me, but I'm going to pass on the  
opportunity."

Then, DO NOT elaborate on why. You have said No. That is the end of the  
discussion. You do not owe them a why, and any attempt to explain why will  
open up a chance for them to try and convince you otherwise. No is a  
complete sentence.

Nancy Duhon, Georgia

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