

How To Deal With The (Truly) Repugnant Client

BY GARY A. MUNNEKE

All lawyers find that not all clients are like Snow White — the fairy tale princess, whose only sin was getting hooked up with a bad apple. They often find themselves dealing with the Wicked Queens of the world, at least in part because the Wicked Queens are always getting themselves into trouble. Most lawyers in practice quickly shed their law school naiveté that they will be noble Knights, traversing the countryside slaying dragons and subduing Wicked Queens. The majority of lawyers work in law firms that represent a variety of clients, who include the good, the bad and the ugly.

Lawyers often encounter clients that seem so repugnant that it is difficult or impossible to represent them. Although the threshold for repugnancy is a very personal one — every lawyer must determine for herself the line between offensive and unacceptable — there are several categories that can make for repugnant clients. These include: individuals accused of heinous crimes, people who espouse ideologically or socially unpopular views, persons who would ask their lawyer to engage in criminal conduct, and those whose behavior deviates from the norms of society. All these potential clients have a right to be represented by counsel when they experience legal difficulties, particularly when they are charged with a crime by the state. In most situations, some lawyer will undoubtedly undertake the representation, although it may prove extremely challenging.

Professor Michael Tigar of the University of Texas Law School represented bombing suspect Terry Nichols after the court experienced difficulty finding a lawyer in Oklahoma willing to take on such a widely-despised client. Tigar showed that it is possible to represent an unpopular client effectively, without necessarily becoming the alter ego of the client.

The Case Of Credit Suisse

On the civil side, a New York Law Journal story on March 3, 1997, described an incident at Cravath, Swaine & Moore, involving the representation of Credit Suisse, a bank accused of holding gold belonging to Jews, either stolen by the Nazis or unclaimed by depositors after the war. A number of concerned associates asked whether Cravath should represent Credit Suisse under these circumstances. The controversy spawned at least two partnership meetings, numerous memos, several threats of resignation and a two-hour open discussion arranged by the partners. In the end, the firm continued to represent the bank, despite the “dark history of hoarding Nazi gold.”

These cases demonstrate that relationships with repugnant clients can be fraught with emotion. The Nichols case places the lawyer directly in the path of the public’s righteous indignation and need for retribution. The Credit Suisse matter pits some lawyers within a firm against other lawyers in the same firm, in deciding whether or not the firm should represent a client whose conduct is viewed as abhorrent

by at least some members of the firm. Both cases confirm that a lawyer or law firm can represent a highly unpopular client, despite the fact that the representation may subject the firm to criticism.

The ethical responsibilities for lawyers who have agreed to represent repugnant clients are somewhat hazy. In fact, it is highly unlikely that the decision either to represent or to decline to represent a client will lead to discipline at all. At the same time, lawyers are often required to decide whether to take cases involving clients whom the lawyer would not choose as personal friends. These situations do not involve clients who ask their lawyers to break the law or whose conduct would prevent a lawyer from taking a case. Nor do they include instances where the client is merely obnoxious, difficult or rude. Rather, these cases cover a fairly narrow set of circumstances where the client's behavior or beliefs raise a legitimate question as to whether the lawyer can competently represent the client.

The ABA Rules And The Model Code

The ABA Model Rules of Professional Conduct and the New York Code of Professional Responsibility address this issue in different ways. Model Rule 1.2(b) states that "A lawyer's representation of a client., does not constitute an endorsement of the client's political, economic, social or moral views or activities." In New York, the Disciplinary Rules do not articulate this non-endorsement view, relegating such sentiments to the Ethical Considerations, in EC 2-27.

The Model Rules provide that one of the grounds for permissive withdrawal exists where the client "insists upon pursuing an objective that the lawyer considers repugnant or imprudent." Rule 1.16 (b)(3). New York's withdrawal rules, (DR 2-110), provide that a lawyer may withdraw if the client seeks to use the lawyer's services merely to harass or delay, insists on pursuing an unwarranted claim, persists in criminal conduct or asks the lawyer to violate the law or ethical rules. DR 2-110(C)(4) also permits withdrawal where the lawyer's physical or mental condition makes it difficult to carry out the representation. Arguably, a strong antipathy for the client might induce a mental condition that would make representation of the client difficult. Despite the lack of clarity in the Disciplinary Rules and Ethical Considerations, it is unlikely that the New York Code would be interpreted to require a lawyer to represent a client if the lawyer's feelings for the client substantially interfered with the lawyer's ability to represent the client zealously and competently.

Right To Decline Representation

If it is permissible to withdraw from a case, then a lawyer may decline to take a case for the same reasons that would later trigger withdrawal. When the lawyer learns facts that make it difficult to represent a client, she should either not take the case or get out of the case as soon as it becomes clear that her judgment may be compromised. The standard is a subjective one. The lawyer must make a decision based on her appraisal of her ability to represent the client. The issue is not whether the client is unpopular or abhorrent to some fictitious reasonable lawyer, but whether the lawyer handling the case entertains a bias against the client that would seriously undermine the lawyer-client relationship. Consultation with the client may help to inform the lawyer's decision, but the client's consent to continue the representation should not trump the lawyer's own belief that she should not continue.

The Cravath case raises a problem that is endemic to law firms. Both Code and Rules talk in terms of the individual lawyer, although whenever two or more lawyers work in the same office, there is a possibility of disagreement as to the client's repugnance. Although some Cravath lawyers found continued

representation of Credit Suisse to be unacceptable, others — a majority of the partners — felt that the client's alleged misdeeds were insufficient to require withdrawal. This creates a difficult choice for the lawyers who disagree with the decision. Do they withdraw from the client by withdrawing from the firm? What is the price of principle?

It's hard to represent a client when the client's conduct offends the lawyer's moral or social beliefs. Though it may be that every client is entitled to a lawyer, it is also true that no lawyer must accept every client. Every practitioner, at some time, will encounter the (truly) repugnant client. Knowing how to proceed can save the lawyer from untold angst, and also assure that the justice system works better for all.