

Handling the Difficult Client

Are we required to let the tail wag
the dog?

Topic Outline

- “Difficult Client” – aren’t they all?
- First Things First: Protect yourself.
- Do we have an ethical obligation to let our clients be stupid?
- The Rules in brief.
- The case law in brief. i.e., can/should you bail?
- How bad can it get? Samples to present.
- Solutions – did it work out?
- Always return to First Things First: Protect yourself and protect your reputation.

Do we have an ethical obligation to let our clients be like Mrs. Pid's son Stu?

- The Professional Conduct Rules in brief:
- 1.4 Client Communications
- 3.1 Meritorious Claims & Contentions
- 3.3 Candor Toward the Tribunal
- 1.6 Confidentiality of Information

Confidentiality of Information

- **New Hampshire Rules**
- **RULES OF PROFESSIONAL CONDUCT**
- **CLIENT-LAWYER RELATIONSHIP**
- *As amended through January 25, 2012*
- **Rule 1.6. Confidentiality of Information**
- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).
- (b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:
- (1) to prevent reasonably certain death or substantial bodily harm or to prevent the client from committing a criminal act that the lawyer believes is likely to result in substantial injury to the financial interest or property of another; or
- (2) to secure legal advice about the lawyer's compliance with these Rules; or
- (3) to establish a claim or defense on behalf of the lawyer in controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or
- (4) to comply with other law or a court order.

Client Communications

- **New Hampshire Rules**
- **RULES OF PROFESSIONAL CONDUCT**
- **CLIENT-LAWYER RELATIONSHIP**
- *As amended through January 25, 2012*
- **Rule 1.4. Client Communications**
- (a) A lawyer shall:
 - (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these Rules;
 - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
 - (3) keep the client reasonably informed about the status of the matter.
 - (4) promptly comply with reasonable requests for information; and
 - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain the legal and practical aspects of a matter and alternative courses of action to the extent that such explanation is reasonably necessary to permit the client to make informed decisions regarding the representation.
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Meritorious Claims & Contentions

- **New Hampshire Rules**
- **RULES OF PROFESSIONAL CONDUCT**
- **ADVOCATE**
- *As amended through January 25, 2012*
- **Rule 3.1. Meritorious Claims and Contentions**
- A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, **unless there is a basis in law and fact** for doing so that is **not frivolous**, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration or institutionalization, **may nevertheless so defend the proceeding** as to require that every element of the case be established.
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Candor Toward the Tribunal

- **New Hampshire Rules**
- **RULES OF PROFESSIONAL CONDUCT**
- **ADVOCATE**
- *As amended through January 25, 2012*
- **Rule 3.3. Candor Toward the Tribunal**
- (a) A lawyer shall not knowingly:
 - (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
 - (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
 - (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.
- (b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or **fraudulent conduct related to the proceeding** shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.
- (c) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.
- (d) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding and **apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.**
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The Case Law in Brief

i.e., can or should you bail?

- [U.S. v. Reyes, 352 F.3d 511 \(1st Cir. 2003\)](#)
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- **II. Analysis**
- **A. Counsel's motion to withdraw**
- Smith submitted the motion to withdraw because Reyes wanted new counsel. It has long been recognized that a criminal defendant "should be afforded a fair opportunity to secure counsel of his own choice." *Powell v. Alabama*, [287 U.S. 45](#), 53, [53 S.Ct. 55](#), [77 L.Ed. 158](#) (1932). This court has cautioned, however, that "although the right extends to indigent defendants, it **does not afford them carte blanche in the selection of appointed counsel.**" *United States v. Myers*, [294 F.3d 203](#), 206 (1st Cir. 2002) (citing *United*
- **Page 515**
- *States v. Machor*, [879 F.2d 945](#), 952 (1st Cir.1989)). After a court "appoints an attorney to represent an accused, a subsequent decision to replace that attorney is committed to the **informed discretion of the appointing court.**" *Id.*

1. *The motion to withdraw was untimely*

A defendant "has no right to representation by a particular attorney when such representation would require undue delay." *United States v. Hallock*, [941 F.2d 36](#), 44 (1st Cir.1991) (internal citations omitted). In evaluating a motion to withdraw, a court must balance the "interest in retaining counsel of [the defendant's] choice against the public's interest in the prompt, fair and ethical administration of justice." *United States v. Richardson*, [894 F.2d 492](#), 496 (1st Cir.1990) (internal citations and quotations omitted).

2. The district court made an adequate inquiry

When a defendant "seeks the replacement of appointed counsel, we expect the trial court to conduct an appropriate inquiry into the source of the defendant's dissatisfaction." *Myers*, 294 F.3d at 207 (internal citation omitted). The "extent and nature of the inquiry may vary in each case; it need not amount to a full formal hearing." *Woodard*, 291 F.3d at 108.

3. *There was not a total breakdown of communication*

A defendant who seeks to have appointed counsel withdraw must also show "more than the mere fact of a disagreement; he must show that the conflict between lawyer and client was so profound as to cause a total breakdown in communication," preventing an adequate defense. *Myers*, 294 F.3d at 208.

Reyes was unable to show a total breakdown in communication, and the district court did not abuse its discretion by holding that there was no such breakdown. *See, e.g., United States v. Pierce*, [60 F.3d 886](#), 891 (1st Cir.1995) (holding that there was no abuse of discretion when the record revealed the lawyer and defendant conversed and had some appreciation for each other's opinions). Furthermore, a defendant cannot compel a change to counsel by the device of refusing to talk with his lawyer.

The district court examined the timing of the motion to withdraw, questioned the lawyer and defendant on why the motion

Page 517

was filed, and concluded that there was no breakdown in communication precluding the presentation of an adequate defense.

See Myers, 294 F.3d at 208. This decision falls squarely within the realm of the district court's discretion. *See id*

How Bad Can it Get?

Are we social workers?

Are we hand-holders?

Are we practical?

TO: MR gleason

8-21-12

MR gleason the reason for this letter is because
me and my fiance want to get married here in
[REDACTED] county. i called the U.S Marshalls and they
told me that i needed to write you the letter
first so can you please ask the Marshalls for the
approval so i can get married here at [REDACTED]
County jail MR gleason we want to get married A.S.A.P
So call me here at the jail when you get this
letter so you can tell me when can i get married
Her name is [REDACTED] D.O.B [REDACTED] and we can
wait any longer. Thank you.

Sincerely

[REDACTED]

6-4-12

United states of America

v.

CR

RE. Relief of Counsel from Representation

CASE NO. CR

I would like my current counsel
to no longer represent me on my
current case. Coupled with the fact
that my trust is irreversibly damaged.
It is my decision that Attorney
James Gleason withdraw from my case
forthwith. Your immediate withdrawal
would be appreciated.

Thank you.

Sincerely,

C.C. Attorney James Gleason
C.C. clerk of the courts

Solutions

Can it ever work out for the court and counsel?

- Patience exercised by counsel, prosecutor, and, court will often assist in the orderly administration of justice.
- As officers of the court do we have an obligation to the court to attempt to salvage the relationship and allow the case to move forward?
- Always, all ways, return to “First Things First”: Protect yourself and your reputation.