



"Not to worry, I've handled hundreds of cases like this and the way I see it, I'm bound to win one sooner or later."

HOW DO I MAKE MY LAWYER FIGHT FOR ME OR STAY ON TOP OF MY CASE?

Many lawyers work a case in their own sweet time, at their own convenience and don't communicate with you about your options and your rights. They want you to do everything their way and not consider your strategy. How did I hold my attorneys accountable during the short time that I had them on board in my second court action?

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Introduction

In this short and concise “How-Do” manual, I point out to you first where to find the ethical rules for attorneys (in Section 1). Then in Section 2, I highlight the most important rules in my opinion and the ones that I would use to light a fire under an attorney who: (1) doesn’t communicate in a reasonable time; (2) doesn’t grant my requests for information; (3) doesn’t attempt to fight for the things I want the attorney to fight for. In Section 3, I show you how to apply those rules and light that fire under the attorney. Then your attorney will either get on the job, or get hostile with you for having the audacity to tell him to do his job, or he will quit and prove to you that he was never in it for you and that you would have been worse off keeping him on board.

If you want to keep your attorney on board, you may also want to purchase the How-Do manuals “Weapons of Litigation” that shows weapons that attorneys do NOT use most of the time, along with major blunders and bad strategies they have. If things are really bad and you think you deserve your money back, you may want to purchase the manual for “Attorney Misconduct”.

Since I won without a lawyer, you may think I am out of touch with the feelings of having an incompetent, passive or lazy attorney. That is not the case. I had my own struggles with attorneys. Moreover, I see many mothers’ and fathers’ frustrations first hand and it infuriates me as well, because their relationship with their children hangs in the balance. I was in and out of court regularly from 2001 to 2011. After my initial custody battle, and then a child support modification action, I went back to court for the third time in 2002. The mother objected to me relocating 40 miles from Seattle to the Tacoma area.

I was afraid of a possible trial in the relocation case. (I now know better and that I can do my own trial, as many fathers have done to get custody or fair visitation). So, I hired an attorney. I got a huge discount. But, that was a very frustrating ordeal because I knew a lot about the process already and the attorney did NOT want to fight like I wanted him to. And I was in a catch-22 because I was getting a generous discount.

One time after a hearing, the attorney said, “I got great news. They want to settle.” But, I did NOT want to settle. I wanted to win. So, I ended up finding a more aggressive attorney who was willing to fight. Fortunately, he let me write all my own paperwork, assemble my trial notebooks and more. But, after the attorney was on board for about 4 months, he was saying that maybe I should settle and work things out. The matter was going forward to trial with no legal grounds. So, I went to the Court of Appeals, without an attorney and got Discretionary Review granted. Then mother quit.

So, I personally know of the frustrations of having an attorney. I have seen the advantages of representing myself and I have seen the disadvantages of having an attorney. I catch opposing attorneys off guard in court and school them simply because I know more than they do about this case. When I have a bad attorney, then I suffer from the opposing attorney’s knowledge of the case, if he is more aggressive and has been on board longer. Hence, it’s best to go pro se, or at least light a fire under your lawyer. “How do” you light that fire? I show you below in this “How-Do” manual.

SECTION 1: THE MAIN ETHICAL OBLIGATIONS FOR ATTORNEYS

1.1 The Rules of Professional Conduct (RPC)

One of the main governing set of rules that hold an attorney accountable for their conduct is the Rules of Professional Conduct (RPC). There is a set of rules for Washington State on the court system's website:

www.courts.wa.gov

If you go there and then click on "Court Rules" on the left, and then click on the darker gray bar "State Court Rules" and then go down to the first category "Rules of General Application", you can click on "RPC" and there are the Rules of Professional Conduct.

1.2 The American Bar Association's "Model Rules of Professional Conduct"

The RPC in the link above is "modeled" after the American Bar Association (ABA) rules for attorneys, called the "Model Rules of Professional Conduct". These can be found by simply Googling them. More specifically, you can go to the ABA's website:

www.AmericanBar.org

Look in the middle of the page for the "Popular Resources" section and click on "Model Rules of Professional Conduct". Under the section "About the Model Rules" there is a link to the rules.

This page is different in that the ABA talks about the whole history of the rules in general. Then when you click on the rules link, you can see that the actual rules are very similar, if not identical in most places.

1.3 Each state's rules

Each state has its own rules, modeled after the ABA's rules. You most likely can find the RPC for any state by Googling "Rules of Professional Conduct (state)" and filling in the state that you wish to find.

Again, they will be modeled after the "Model Rules" of the ABA.

SECTION 2: THE MOST IMPORTANT RULES IN AN ATTORNEY-CLIENT RELATIONSHIP

2.1 Diligence – RPC 1.3

Like most of these rules, the ABA rule is identical to Washington's RPC. It is short, sweet and simple and reads:

“A lawyer shall act with reasonable diligence
and promptness in representing a client.”

Is your attorney doing this? For me, the most important part of this rule is the breakdown of it in the “Comment” section. The parts in the commentary that I think are noteworthy are highlighted as follows:

[1] A lawyer should *pursue* a matter on behalf of a client *despite opposition*, obstruction or *personal inconvenience* to the lawyer, and take *whatever* lawful and ethical *measures* are required to vindicate *a client's cause* or endeavor. A lawyer must also act with *commitment and dedication* to the interests of the client and with *zeal* in advocacy upon *the client's* behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

[2] A lawyer's *work load* must be controlled so that *each matter* can be handled *competently*.

[3] Perhaps *no* professional shortcoming is more *widely resented* than *procrastination*. A *client's interests* often can be *adversely* affected *by the passage of time* or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, *unreasonable delay* can cause a client *needless anxiety* and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

[4] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should *carry through to conclusion* all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is

looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See Rule 1.2.”

Has your attorney acted with reasonable diligence and done whatever it takes to zealously advocate for you and your cause? Or has the attorney procrastinated and caused you “needless anxiety? Especially if the other opposing attorney is relentlessly trying to railroad you.

Maybe your attorney has told you to take the high road and play it cool while the other side attacks. Maybe your attorney has convinced you that playing the good guy or wearing the white hat will win you some points with the court. I personally have never, ever seen that work.

Notice that this rule requires the attorney to advocate for **your cause**, not his or hers. I see many attorneys tell a client, “This is the way I always do this” or they blow off your requests to accomplish certain goals, because “that’s just not the way it works.” You paid that attorney a lot of money. That alone is reason for them to work hard for you to accomplish your goals and to do so with zeal and diligence. But, the rules above add to that obligation.

If you pay someone \$1,000 to paint your house and they are moving slowly, taking extra breaks, being a no-show sometimes for the job on a sunny day, or let’s say they start painting your fence and you only wanted your house painted. The painter is not accomplishing your goals or doing what you paid the painter to do. He’s not acting with diligence and he’s not even trying to do what you paid him in the end to do. Plus, he’s taking too long to do it. Are you going to let him say: “Look this is the way I always do this. Just let me do it my way in my own time.”

Are you going to let the painter whom YOU hired talk to YOU as if he’s YOUR boss? Of course not. But, I see many fathers, and even mothers, letting their attorneys talk to them like this. Why? Often it is because the client is in the dark about RPC 1.3 and doesn’t know how the system works. The painter’s failure is obvious and common sense. But, a client should look at this similarly. When you are getting ripped off, you generally know it. Trust your gut instinct. In Section III, I discuss what to do about this.

2.2 Communication – RPC 1.4

This is the most violated rule in family law. I see attorneys violating all parts of this on a regular basis. The rule reads:

“(a) A lawyer shall:

(1) **promptly** inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), 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** a matter to the extent **reasonably necessary to permit** the client to make informed decisions regarding the representation.”

Most attorneys don't communicate well with their clients. Most family law attorneys do not consult with the client about THE CLIENT'S goals. For instance, a client might say, "I want to go for 50/50 custody." The attorney might reply, "The court will never go for that" or "that never happens so let's just stick to every other weekend." Why not at least try? If you lose, at least you went for it right? If you shoot for the stars and miss, you will still hit the moon. If you shoot for the clouds, you might miss and hit a tree branch. I think most family law attorneys representing dads only shoot for the tree tops.

But, if you paid a \$5,000 retainer and your attorney thinks that that is too much work, then there's a major problem. Five thousand dollars is a lot of money for someone to day, "Eh, I don't want to try THAT hard." That's crazy. At \$200 - \$400 per hour, that attorney should be sweating and bleeding and be totally exhausted after fighting for you. But, that's just my opinion.

I'm going to show you in the next section how to deal with this incompetence and laziness or this "too busy for just you" mentality. Remember, in the RPC 1.3 commentary, it said that the attorney should be maintaining a workload that keeps him available enough to work hard for you. If your attorney is not communicating with you, then you probably have not tried the tactics below to get him in gear and moving.

2.3 The Oath of Attorney (APR 5(e))

The Oath of Attorney can be found in Washington on the state's court website www.courts.wa.gov. Instead of clicking on "RPC" after following the instructions above, click on "APR", then click on "APR 5" which reads as follows:

"(e) Contents of Oath. The oath which all applicants shall take is as follows:

OATH OF ATTORNEY

State of Washington, County of _____ ss.
I, _____, do solemnly declare:

1. I am fully subject to the laws of the State of Washington and the laws of the United States and will abide by the same.
2. I will support the Constitution of the State of Washington and the Constitution of the United States.
3. I **will abide by the Rules of Professional Conduct** approved by the Supreme Court of the State of Washington.
4. I will maintain the respect due to the courts of justice and judicial officers.
5. I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, or any defense except as I believe to be honestly debatable under the law, unless it is in defense of a person charged with a public offense. I will employ, for the purpose of maintaining the causes confided to me, only those means consistent with truth and honor. I will never seek to mislead the judge or jury by any artifice or false statement.
6. I will **maintain the confidence and preserve inviolate the secrets of my client** and will accept no compensation in connection with the business of my client, unless this compensation is from or with the knowledge and approval of the client or with the approval of the court.
7. I will abstain from all offensive personalities and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged.
8. I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay unjustly the cause of any person."

This is simply an affirmation of the attorney's obligation to follow the Rules of Professional Conduct and to maintain the attorney client privilege. But, it is good to know because it is **yet another reason** that an attorney should be diligently and zealously representing you and "earning their money".

2.4 RPC – Fundamental Principles Of Professional Conduct

This opening section under the RPC is not a rule, but it further shows how vital the role of an attorney is and how the attorney should take it seriously. You should also read the Preamble and Scope section, but I must point out this section of the Fundamental Principles:

“The *continued existence of a free and democratic society depends upon* recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and the capacity through reason for enlightened self-government. Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. *Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible.*”

Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to ***maintain the highest standards*** of ethical conduct.

In fulfilling professional responsibilities, a lawyer necessarily assumes various roles that require the performance of many difficult tasks. Not every situation which a lawyer may encounter can be foreseen, but fundamental ethical principles are always present as guidelines. Within the framework of these principles, a lawyer must with courage and foresight be able and ready to shape the body of the law to the ever-changing relationships of society.

The Rules of Professional Conduct point the way to the aspiring lawyer and provide standards by which to judge the transgressor. Each lawyer must find within his or her own conscience the touchstone against which to test the extent to which his or her actions should rise above minimum standards. But in the last analysis it is the desire for the respect and confidence of the members of the legal profession and the society which the lawyer serves that should provide to a lawyer the incentive for the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permit of no compromise.”

SECTION 3: HOW TO GET AN ATTORNEY TO WORK FOR ME

3.1 I never do these things

When I am trying to communicate with an attorney, ask questions, request information, etc., I always do so *in writing*. I never limit all my communications to phone calls. Guess what happens if all of your request, demands, and communications with your attorney were done over the phone? They do not exist !

If you try and demand money back, or threaten to complain to the Bar Association, there is no proof whatsoever that your client failed you. There's no proof that you demanded information on March 12, and then again on the 14th and then again on the 16th. An attorney will turn around and say, "I did everything you asked, or what I could do." There is no paper trail.

Never limit your communications, requests or demands to an off-the-record phone call!

This does not mean to never call your attorney. But, you can always follow a phone call up with an email.

When you write an attorney, never leave the letter open ended so they have limitless time to get back to you. Always demand a deadline. And then, if the deadline is ignored, put words in their mouth, which will show that they are willfully defying you and your requests.

For instance, you might call the attorney and say, "Hey can you email me their latest motion so I can review it?" Then the attorney says, "Sure." Or maybe you called and left a few messages demanding a copy of the motion. Never give up and leave it at that.

You can follow the request up like this:

"Dear Attorney Jones:

Per our phone call today, I need that motion to review. Please email it to this email address within 24 hours, or by the end of the day tomorrow. As you know the hearing is next week and we need to reply and I need to review it in order to have a thorough reply, or I will likely lose."

Or if you are ignored, you can write the email citing the days and times you called and the rest of the content can be the same. You ask for the same thing and talk about the urgency for the attorney to get back to you right away.

So, never do the following when communicating with your attorney: (1) leave all your conversations to off-the-record phone calls or in-person talks; and (2) never leave it open ended regarding the time for the attorney to get back to you, give a deadline.

3.2 What TO DO and how to get the attorney moving

In subsection 3.1 above I started showing you how to write an attorney. This is actually what attorneys do for a living. They write letters and make demands and then hold someone accountable for what they wrote, whether it was true or not.

For instance an attorney might write a letter like this:

“Dear Mr. Williams:

At the visitation exchange last week, you harassed my client when she was handing the baby over to you. We ask that you cease from harassing the mother. It is completely inappropriate and it disturbs and rattles the mother.

Please cease and desist this conduct.”

So, let’s say this is a lie and you are shocked and you just ignore it. Then the attorney writes another similar letter after the next child exchange. But, you didn’t do anything at the exchange. So, you ignore it again. Next thing you know, you have a restraining order slapped on you and because you did NOT reply to those letters, the attorney goes into court showing the “paper trail” and it’s taken as fact.

Letters and paper trails are powerful. They leave a trail and a non-answer to a letter IS an answer.

So, whatever your dilemma with your attorney, you need to write a letter to him/her demanding the things that you need/want. You also may want to quote him/her when they said something you did not like off the record. For instance, you may write something like this:

“Dear Attorney Jones:

I would like you to subpoena the mother’s work records from two years ago. I know she is lying about her income and her missing work due to an accident.

I understand that you told me that the records may not show anything, but I don’t know that for a fact and I am willing to pay for subpoenas. So, the employer can prove me wrong. I’d rather try and be wrong than NOT try and end up being wrong, wishing I would have trusted my instincts.

Please get back to me by Monday the 24th and let me know that the subpoenas have been sent or scan and forward a copy of them to my email.

I also would like to move forward with modifying the parenting plan. Visits have gone well and there is no reason why I should not have overnight visitation. Please get back to me tomorrow with a plan of attack. I want to be in court within three weeks with a new motion.

I know you said that we should wait until the GAL has finished her report, but I see no reason to wait, especially after reviewing the law and since the mother doesn't accuse me of any abuse. She's the one who said I could have unsupervised visitation all day, so why can't I have unsupervised overnights. I don't think we should wait on the GAL. If there is a rule or law preventing me from moving forward let me know. Otherwise, let's move forward."

Notice that the letter demands the attorney to come up with a good answer as to why he won't move forward. Notice that it lays out some reasons why to move forward. Also, notice that the letter quotes what the attorney said and now sort of rebukes him for saying it, in a nice professional manner. And notice that there are deadlines for the attorney to act.

The attorney will have no reason to ignore you and no reason to not act, or at least he will communicate with you by your deadline.

The attorney will be on alert about you talking to him in writing. All the other clients who only talk via phone will be a second priority compared to you.

If the attorney still ignores you or still defies your requests and strategy, then you will need to get more aggressive in your writing, as I lay out in the next section below.

3.3 What to do when the all methods have failed and how you must ALWAYS follow up with multiple methods of communication

After the polite professional methods have failed and if the attorney continues to defy you or ignore you completely, it's time to get harsh with your demands. It's time to include the Rules of Professional Conduct.

The balancing act you have to do here is: (1) get your attorney to work for you WHILE, (2) not ticking off your attorney so much that he really does not want to fight for you.

So, in the next letter, or sets of letters, you demand that he comply with the RPC and tell him where he has violated the RPC, but you don't threaten to file a bar complaint or a malpractice lawsuit. He already knows that is possible by you simply citing the RPC. Stating, "If you don't do this, I will file a bar complaint" will motivate him to quit or be angry with you and you may make him your worst enemy.

So, you may want to write a letter like this:

“Dear Attorney Jones:

I tried to contact you last week about getting a subpoena and setting a hearing for visitation. I called and left two messages with your paralegal on March 14th and March 16th and never heard back from you.

Then I sent you an email, asking you to engage in these things. You have not done so. You told me that you were opposed to subpoenas and a new motion because they might not work and we are waiting on a GAL.

The problem with that is that this is my case and you are my attorney and you are supposed to diligently represent me with zeal. You are not obliged to wait around for everyone else and worry about what they think. You also are not bound to sit still and not do something because it “might not work”. If attorneys only did things when they were 100% sure it would work, then attorneys would never go to court.

I have reviewed the Rules of Professional Conduct and your Oath of Attorney. You swore to follow RPC 1.3 and 1.4. The first rule requires you to diligently and zealously represent me. The second requires you to communicate with me as to how to accomplish MY goals, not yours. You have not even afforded me the chance to share my goals with you and have shut me down at times.

I paid you a great deal of money and there has been little concern for my position and my needs and even for the mere courtesy of returning a phone call or considering my requests.

The Fundamental Principles of the RPC state that your role is “vital” in me obtaining a fair trial and a fair result in this case. You have not been fulfilling your role in this matter.

Therefore, I request a meeting with you within two days, or an email back from you within 24 hours of receiving this one, in order to discuss my goals and so my requests for information will be granted....”

Now that the attorney has neglected you and your needs up to this point, it is important to make sure, without a doubt that he/she receives this communication. So, I would send it via email, fax and Delivery Confirmation mail and Certified Mail.

Delivery Confirmation mail can be traced online like a UPS or FedEx package. It is scanned and delivered to the mailbox and posts online at www.usps.com. Certified Mail must be signed for. So, if the attorney is out to lunch, an “attempted delivery” notice is left at the office. It is then up to the attorney to go down to the post office and retrieve your letter. If he/she doesn’t, then you still have a Delivery Confirmation.

Certified Mail that is signed for makes it undisputable that the letter was received. But, just in case it isn't, I like to use Delivery Confirmation.

Attorneys actually do this often. They will send a letter or pleadings or documents via Certified Mail, but just in case they will also send via regular mail. I don't like the regular mail because there is no proof it was sent, other than your own word.

In actuality, Delivery Confirmation is good enough. But, if you want to go the extra mile, then Certified will lock it in without any doubts.

After all these forms of communication, your attorney has no excuse whatsoever. This is also a way to communicate with an opposing attorney or party if you want to hold them accountable for something you say, request or demand.

When signing the email, fax and letter, you should always put your name, address, phone and in the email so that there is also no excuse about getting back to you. An attorney cannot say that they didn't know how to get a hold of you because they have three ways to get back to you.

I like to write a letter in a Word document and then copy and paste it into an email. Then I just fax the letter as is, and put it in the mail after faxing it.

The format would look like this:

"Attorney Jones
1111 Washington Street
Seattle, WA 98115
P: (206) 555-1212
F: (206) 555-1219
AttorneyJones@joneslaw.com

**Re: Williams Dissolution Case #11-3-00111-7
Demand for meeting and compliance with RPC**

Dear Mr. Jones:

[body of email, such as the one above]

Signed,

James Christianson
31919 – 6th Ave. S., Suite 211
Federal Way, WA 98003
(206) 553-9158
HowIgotCustody@yahoo.com

If you still have problems after this, then you may want to purchase the manual on "Attorney Misconduct".

If I have that many problems, then I don't want an attorney and definitely don't need an attorney. If you are losing in court over and over or your attorney is not even attempting to move the way that you want them to move, then why are you paying them for such little output? You can go to court and lose FOR FREE with two hands tied behind your back. Moreover, when I represent myself, I can go to court, get subpoenas, do discovery, etc. any time I want to and I am not limited by the neglect of someone who does not care about my case and my child as much as I do. And I am not limited to juggling 20 other cases. My case is my own case that I have to deal with. The opposing attorney is at a disadvantage when I have all my free time available to fight him and he has to fit me into his schedule.

But, if you are maintaining an attorney and having troubles, the only recourse is to hold them accountable and use the RPC and his oath to light a fire under him/her.

Outside of this recourse, you may have to do a bar complaint or even maybe a malpractice lawsuit. I discuss those options in the "Attorney Misconduct" manual.

If you decide to continue with your attorney, best wishes having them advocate for you as they should!