

# The Attorney's Speech

By Travis Pickens

**Lawyer:** Hey, how are you doing?

**Client:** Great, but I've been trying to get through to you for a week.

**Lawyer:** Gosh, sorry, I've been in court and in meetings the past several days.

**Client:** I left several messages requesting information and an update and your paralegal didn't really know what was going on.

**Lawyer:** Well, he's really good at doing research, drafting pleadings, that kind of thing. That's why I keep him on. He's not much with clients.

**Client:** I need some information. My niece called me and said she had seen on OSCN that the court had entered an order nearly two weeks ago.

**Lawyer:** Well, yes, the court did rule. I've just been so busy I didn't have a chance to call you or email it to you.

**Client:** Oh really? So the court *has* already ruled? Great, what happened?

**Lawyer:** Well, we got what we wanted.

**Client:** Yes! Victory, Sweet justice! Finally... the court granted our motion!?

**Lawyer:** No, not exactly, but we got what we wanted.

**Client:** So the bastards have been found liable? And we'll have that hearing on damages and punitive damages you've always talked about, right?

**Lawyer:** That procedure really won't be necessary, yet. The court did not grant our motion, but did not fully grant the other side's motion on summary judgment either.

**Client:** Huh? The court did not grant our motion?

**Lawyer:** No, the court found there were material facts still in issue.

**Client:** Well, so how is it true that "we got what we wanted?"

**Lawyer:** We've educated the judge on our position so when we go to trial, she'll be in a position to rule in our favor once we put on our evidence.

**Client:** Oh..... I would really rather win now.

**Lawyer:** Well, uh, yes, that would save some of your time and money, absolutely.

**Client:** Well.... I guess the lying trolls did not get what they wanted either.

**Lawyer:** True, the court did not rule in their favor, completely.

**Client:** "Completely?" What does that mean?

**Lawyer:** It means the court ruled in their favor on some of their defenses.

**Client:** Which ones?

**Lawyer:** The defenses to damage to property... and the contract claim....

**Client:** #@%\*&!, that's everything but our claim for unjust enrichment, and it does not give us all our damages.

**Lawyer:** Yes, but it's good as gold.

**Client:** Well, you know what? I don't have any "gold" myself to keep going. I've done everything I can do just to keep up with your bills. Thank God the other side has spent every bit as much as we have on this, probably more.

**Lawyer:** Well...uh...uh... that...that's something else we need to...er, discuss...some claims entitle the prevailing party to their...uh...attorneys fees....

The multiple communication problems represented within this, for some, somewhat vaguely familiar dialogue should be self evident. The more interesting question is why, as lawyers, we sometimes allow ourselves to fall into this communication trap that is above all others the easiest to cure. This is especially so since statistics from the Office of General Counsel confirm that

bad communication leads to a large number of grievances. ORPC 1.4 sets out our responsibilities. You must:

- Be prompt in your communications; delay is rarely justified. The lawyer's discomfort or inconvenience is not an excuse. Delayed communications could, for example, be justified when advising a client of a troubling psychiatric diagnosis.
- Often, obtain the client's "informed consent," which is a defined term in ORPC 1.0 (e). Multiple rules require the informed consent of the client prior to taking action of any consequence. Generally, "informed consent" means the client has agreed to a course of action following an explanation of the associated alternatives and risks.
- Sometimes, obtain the client's agreement or informed consent "confirmed in writing." The phrase "confirmed in writing" is defined in ORPC 1.0 (b). A few rules require this (e.g. division of fees and waiving conflicts). Generally, "confirmed in writing" includes a document signed by the client (emails are acceptable), and confirming letters written by the attorney following a conversation.
- Reasonably consult with the client regarding the means of accomplishing objectives, unless for example, during trial, immediate action is necessary.
- Reasonably inform the client of the status of the matter.
- Promptly give the client information requested and if unable to do so inform the client as to when the information will be provided.
- Consult with the client regarding relevant limitations imposed by the Rules of Professional Conduct.
- Explain matters as reasonably necessary so that the client can make informed decisions.
- Act upon the instructions given by the client, and if given previously, you may do so without further consultation unless there has been a change in circumstances.
- Promptly communicate settlement offers or plea proposals to the client unless there are prior instructions or authority upon which you may rely.
- Go over all important provisions of any settlement agreement.
- Explain general strategy and prospects for success.
- Explain tactics to the client that will significantly affect costs or relationships.



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