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Treat Clients with Genuine Respect

Perhaps the most frequent question I am asked to address at speaking engagements is "How do we stay out of trouble?" or, put another way, "How do we avoid complaints?" I've answered that question many times by discussing a lawyer's obligations to maintain his or her trust account in good order, to communicate with clients regularly and substantively, to be diligent and competent in the pursuit of the clients' interests and to know the signs of stress and addictive or aberrant behavior in one's own life and in the lives of one's colleagues. Of course, familiarity with the Rules of Professional Conduct is essential. But there is another answer that is fully consistent with the fact that our disciplinary agency is generally complaint driven. That answer is: Have clients who like you.

Malcolm Gladwell wrote in his recent book, *Blink*, about an analysis of medical malpractice lawsuits that resonated with me and I think will with you, as well. The book is about the importance and utility of rapid, intuitive conclusions, as against conclusions reached after deliberation and study. In the medical malpractice analysis, it was determined that there are doctors who make many mistakes and never get sued while there are highly skilled doctors who get sued quite often. Most people who sustain an injury due to doctor negligence never file a lawsuit. Gladwell found that patients file suits because they've been harmed by medical negligence and "because *something else* happens to them." That "something else" is how the patient was treated by his or her doctor on a personal level.

Gladwell noted the results of a researcher's study of hundreds of conversations that were recorded between a group of physicians and their patients. About half the doctors had never been sued; the other half had been sued at least twice. The researcher found that just on the basis of the conversations, clear differences between the groups could be observed. The doctors who had never been sued spent more than three minutes longer with each patient than those who had been sued. The doctors who had never been sued were more likely to engage in "active listening," encouraging their patients to expand on what they were saying. Those doctors were far more likely to laugh and be funny during the visit. There was no difference between the groups in the quality or quantity of the information they gave their patients. The difference was in how they spoke and the extra three minutes the doctors who never were sued devoted to their patients. The doctor whose tone was dominant tended to be in the sued group; the doctor whose voice sounded less dominant and more concerned tended to be in the non-sued group. Gladwell concluded that it came down to a matter of respect and that the simplest way that respect is communicated is through tone of voice. A doctor's dominant tone will likely place that doctor in the sued group. He suggested that when you next meet a doctor in his office and he begins to speak, if you sense that he's talking down to you or isn't treating you with respect, listen to that feeling – you have found him wanting.

Finally, Gladwell quotes a medical malpractice lawyer, who observed that in all the years in the business she never had a potential client who said, "I really like this doctor, and I feel terrible about doing it, but I want to sue him." Similarly, I cannot recall, in all the years I've been reviewing complaints against lawyers, even one in which the complainant said: "She was a great lawyer who always treated me with respect, but nevertheless, I'd like to make a complaint."

Lawyers must value their role as the stewards of law and justice and must have fidelity to their ethical obligations. But, staying out of trouble? I'd say the first rule is: Treat each client with genuine respect.