

Ethics Committee Chair Has Tips for Young Lawyers

by Katrina M. Homel

Deborah Jean Massaro has one hot tip for young lawyers—make sure you read your rules of professional conduct.

“I think that the best tip would be for a young attorney who is just coming in from the bar exam—they’ve passed and they are just about to start a new career—to become familiar with those rules,” she said. “You want to be able to read them and understand them, and not be on the receiving end of having to defend yourself against them. If you become familiar with them, that is the single best tip that I can give a new attorney, to know what is proper conduct and know what you should avoid.”

Massaro, a family law attorney in private practice in Clifton, is the chair of the District XI Ethics Committee in Essex County. The committee, comprised of 15 attorneys and five members from the public, investigates ethics complaints filed against attorneys in the county. Similar committees across the state may serve one or several counties, and the committees vary in size.

Massaro said that the ethics committee’s work on a matter starts when a grievance is filed. She emphasized: “If somebody has a grievance against an attorney—and it doesn’t have to be the person’s own client, it can be someone, for example, who’s observing in the courtroom and they overhear an attorney acting in a manner that they believe is an ethical issue—they can file a grievance.”

After the grievance is filed, the secretary of the committee and a public member review the grievance. The public member makes a recommendation about it and the secretary then determines if it rises to the level of a potential ethical issue. Complaints that are only about fee amounts will be forwarded to the appropriate fee arbitration committee for the relevant county.

If the grievance does rise to the level of being a potential ethical issue, it gets docketed and is given to one of the ethics committee members to be investigated. According to Massaro, approximately three-quarters of

the grievances that come in don’t get docketed. However, she noted, “At any given time, there are generally 50 cases out there.”

The committee makes its best effort to match up the area of law at issue in the complaint with an investigator who has a background in that area. If, after investigation, it is determined that the ethical rules have been violated, the investigator writes a formal complaint setting forth the ethical rules violated and the violations.

Massaro noted that she sees a significant number of ethics complaints arise because, though the subject of the grievance turned out not to be an ethical issue, the attorney didn’t respond to the investigator.

“If an attorney doesn’t cooperate, and we have many instances, believe it or not, where an attorney doesn’t cooperate, that in and of itself is an ethics violation—failure to cooperate with the tribunal,” she said. “We have had a number of cases where the conduct that the attorney has been accused of doesn’t rise to the level of an ethics complaint, but because they refuse to contact the committee—they won’t call the investigator back, [and] they basically blow it off—they find themselves with a complaint for that charge, not for what they were accused of originally.”

“If the attorney would just cooperate from day one and answer the phone call that’s made or write a letter back—give some semblance that you’re cooperating—that, in and of itself, would have avoided a complaint, and they would have had a clean record because the underlying charge wasn’t there,” she added.

After the formal complaint is written, there will be a hearing before a panel of committee members that includes attorney members and one public member. The hearings are held in the county courthouses. An attorney can appeal an adverse determination to the Office of Attorney Ethics, and ultimately to the Disciplinary Review Board. Due to their serious nature, complaints concerning trust accounts are frequently forwarded directly to the Office of Attorney Ethics.

Massaro shared several common pitfalls that she sees young lawyers run into. “I think the main thing is that they’re just not keeping an eye on the file strongly enough,” she said. “I think if they can pay attention to their file, know their file, they can avoid a lot of these problems. Also, keep their client informed.”

“I think the best tip is to document everything,” she added. “If you have a conversation with your client and your client specifically directs you to do or not do something, you need to write that down.”

Massaro observed that attorneys at all experience levels run into similar challenges with the ethical rules. She stated, “I think a top tip would be to treat the client the way that you would want to be treated if you were represented. Be mindful and try to understand where the client is coming from.”

“Return phone calls to people. Keep your client informed. Always know your file. Don’t go in unprepared, and think, ‘I haven’t looked at this file, I’ll just wing it,’” she added. “You can’t wing it because you’ve got a client that hired you to do something, and even though it may have been months until you’ve gotten into court, that client has been agonizing that whole time. When you get into court, you want to do the best job that you can for your client.”

She also noted that many attorneys could avoid an ethics complaint by keeping accurate records, as well as by always being courteous to the court and not arguing with a judge.

She further noted that a common ethical pitfall could be avoided by keeping up the basic requirements to maintain your law license in New Jersey. “Believe it or not, one of the types of complaints that we see is that lawyers are on an ineligible list, and don’t even realize it, because of one of three things: 1) they haven’t paid into IOLTA, 2) they haven’t paid into the client protection fund, or 3) they haven’t met their CLE credits,” she stated. Attorneys often only learn this when a judge, prior to a court appearance, tells them, and they should make haste to remedy the issue.

She also noted that not all attorneys may be aware of the ethical concerns about the use of email. “With all we have electronically, in these emails back and forth, you cannot give certain personal information through email,” she said. “You cannot mention anybody’s name. You either use the docket number or you use initials. It’s OK in a fax, but anything in an email is considered out

there for anyone to see, and you have a breach of confidentiality that can occur.”

Massaro emphasized that attorneys should reach out to each other and the committee if they need help—not just with ethical questions, but also with concerns about running a practice.

“We see issues with medial issues, alcohol, or drugs, or people are just simply worn out, they’re deeply depressed, and they are just not running their practice the way they should,” she said. “Rather than run afoul of the rules, reach out to another attorney and say, ‘Look, I’m really having a problem here,’” she said. “You can reach out to attorneys, reach out to senior partners, and make that known, because we do have the ability, through the law firms and bars, to try to help these people get back on their feet through guidance and counseling, and helping them get the counseling they need, rather than reach the point where their license has been suspended or temporarily on hold.”

She added, “The goal is not to let someone flounder and fall, but to help pick them up and see if there is a way to salvage their career and help them move forward in a positive direction.”

About her role on the committee, Massaro said, “It is a lot of work, and it is very rewarding work. It keeps you on your toes as an attorney because you are immersed in the rules.”

Massaro said that new attorneys who are interested in serving on the ethics committee for the county in which they live and work should contact the secretary and express their interest, at which point they will be given an application to fill out.

At that point, the committee’s vice chair will call the attorney and determine if he or she is qualify to serve on the committee. If the attorney meets all qualifications, his or her application will be forwarded to the New Jersey Supreme Court for review. After that, the attorney will receive a letter from the Supreme Court stating whether he or she has been appointed to the committee or placed on a waiting list, if there are not openings for that particular committee.

If the attorney is appointed to the committee, he or she will then begin attending the monthly meetings. Committee members serve a two-year term, and may serve four additional years if they go on to serve as vice chair and then chair. Massaro shared that the committees have recently revamped their training process so

that new members get much more support in acclimating to the work of the committee. For example, the committees have recently adopted a mentorship program and training packets to support new members.

Whether you are a future member of an ethics committee or are hoping to avoid interacting with an ethics committee altogether, Massaro said that attorneys should ask each other when they have a question about ethical conduct. “Always ask a question if you don’t know something; don’t be afraid to say that you don’t know something. That’s how you learn.”

If, after reading this article, you want to brush up on your ethical rules, you can find them here: <http://www.judiciary.state.nj.us/rules/rpc.pdf>. ■

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