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What to Do When You Realize You Are in over Your Head

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Lawyers are used to being under pressure and having to work nights and weekends. But if you regularly dread the start of your workweek, or you are regularly experiencing extreme anxiety when you think about work, it may be a sign that you are overwhelmed and that you need help. You may have too much work, or you may have taken on a case or cases that are far outside your current expertise. In either situation, your ethical responsibilities require you to take action. The good news is that there are steps you can take, and taking action will be good for your clients and for your own mental health.

The Red Flags

As a lawyer in private practice, you might find it challenging to turn down work. You do not know when the next case will come in the door, and there is no worse feeling than not having enough work to stay busy and worrying about keeping the lights on. Lawyers also hate to disappoint good clients. If a good client brings you a new matter, you might be hesitant to refer that matter out, even if you have too much work on your plate or the matter is not entirely in your wheelhouse. Over time, a lawyer's reluctance to turn down work can result in a buildup of work that is not getting done—or not getting done well. Here are some signs that you are in over your head:

- You dread going into the office on a regular basis.
- You feel persistent anxiety about making a serious mistake.
- You put off working on a matter because it is outside of your expertise, and you are not certain of the right way

to proceed.

- Deadlines feel unmanageable, and you are constantly seeking to extend deadlines even if the extensions are not serving your clients' interests.
- You stop responding to communications from clients and opposing counsel.
- Your anxiety about work spills over into your personal life, and you are not enjoying activities that you used to enjoy.
- You are not sleeping because you are constantly thinking about the work that is not getting done on your cases.

Every lawyer will experience anxiety about some aspect of a case during their career. But when that anxiety persists over a significant period of time, and it impacts your ability to manage a particular case or your overall practice, it is time to act.

The Pertinent Rules of Professional Conduct

The American Bar Association Model Rules of Professional Conduct mandate that a lawyer provide competent representation to a client. Model Rule 1.1 dictates that “competent representation” requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. In most cases, the required competence is that of a general practitioner, but for very complex and specialized matters (e.g., patent prosecution), a lawyer may need particular training and expertise.

The comments to Model Rule 1.1 make it clear that a lawyer can provide competent representation even in a novel field through study and preparation. The required level of attention and preparation may be higher if the matter is complex and involves high stakes. However, a less experienced lawyer may not charge the client for the time needed to reach the required level of expertise, unless the client consents to be charged for that additional time. A lawyer also can satisfy the duty of competence by consulting or affiliating with other lawyers, again with the client's informed consent.

Model Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client. The comments expand on this rule by noting that a lawyer must act with commitment and dedication to the client's interests and with “zeal in advocacy” on the client's behalf (Comment 1). Particularly relevant here is Comment 2, which states that “[a] lawyer's work load must be controlled so that each matter can be handled competently.” Comment 3 states, “no professional shortcoming is more widely resented than procrastination.”

Model Rule 1.4 requires that a lawyer must keep clients reasonably and promptly informed about the status of their matters. The lawyer also must explain a matter to a client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

With respect to litigation, Model Rule 3.2 requires that “[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.” The comment to the rule states that “[d]ilatory practices bring the administration of justice into disrepute.”

Steps to Take When You Realize You Are in over Your Head

1. Pause New Work

Your first step is to put a pause on taking any new work until you have assessed your caseload and taken the steps necessary to make it more manageable. This will be easier if you have a trusted referral network to whom you can refer new clients. Depending on the type of matter and the jurisdiction in which you practice, you may be able to ask for a referral fee. At a minimum, a good referral of a new client is likely to result in referrals coming back to you in the future. While it will not feel good in the short term to refer out new work, the exercise will be helpful to you in the long term as you learn how to balance your desire for more work with your ethical duty to manage your workload.

2. Assess Your Caseload and Decide Whether Withdrawal Is Required

Your second step is to decide whether you have a case or cases that are outside your area of expertise, and then to assess whether you can continue to work on those cases. Sit down and map out what needs to be done in each case, and ask yourself whether you have the time and resources to handle those tasks competently. If you are uncertain about what the case or cases may require, consider asking an attorney who practices in those areas for some general guidance. You may conclude that you can continue to work on the matter if you are able to bring on that more-experienced attorney for targeted support. This will require a conversation with the client and an explanation of why the specialized support is required and how it will benefit the client's case.

Alternatively, you may decide that you need to withdraw from one or more cases and refer those cases to other attorneys. Here again, you should attempt to obtain the client's informed consent, and if the matter is in litigation, you will also need the court's approval. This is likely to be a difficult client conversation. The client will wonder why you agreed to take the matter on and will resist having to pay fees to bring new counsel up to speed. The key to this conversation will be transparency. You should be prepared to assure the client that you will take all necessary steps to prevent any prejudice to the client from bringing in new counsel, such as obtaining extensions of any upcoming deadlines and bringing new counsel up to speed without charging your own time to the client. You may have to refund some fees to the client or waive any fees not yet paid by the client. While all this will be challenging, it is a much better alternative to missing an important deadline and having to face a malpractice suit or disciplinary complaint.

Model Rule 1.16 governs the circumstances in which withdrawal can be accomplished. In all situations, the lawyer should take steps to protect the client's interests, such as giving reasonable notice of the lawyer's intent to withdraw and cooperating in the transfer of the client's file to successor counsel. If you need permission from a court or tribunal to withdraw, your motion to withdraw may not contain any confidential client information, and it generally should be brief and request permission to provide any further information required by the court under seal or in camera.

3. Examine Your Office Procedures

Once you have taken the important step of recognizing that you are overloaded, you should look for ways to ensure that the problem does not recur. This is an area where you would probably benefit from outside help. Check with your state bar organization to see what resources are available to help you evaluate whether you have the right technology to run your practice efficiently. In some states, those resources are funded by bar dues and are otherwise free to attorneys. Do you have a good calendaring system and a good time entry and billing system? Do you have an easy way to sort, prioritize, and file the unending cascade of email messages that we all receive daily? Is there work that you are doing that should be delegated to an administrative assistant or a paralegal? If you are a Westlaw or Lexis user, are you aware of all the ways that those services can assist you in performing legal tasks? Could your law office be just as profitable with a smaller caseload if you raised your hourly rates, sent your bills out more quickly, or more closely tracked your collections? It could be well worth your while to retain a law firm consultant for 10 to 15 hours to look at your office procedures and systems and suggest small changes that could boost the profitability of your practice while allowing you to focus more on your legal work.

4. Build a Support Network

If you are a solo practitioner or work in a very small firm, look for opportunities to network with other lawyers who practice in your area. Your state or local bar organization may be a place to start building these networks. You may also find these lawyers through a local chamber of commerce or through local civic or religious organizations. Knowing lawyers with similar practices can be a valuable resource when you are looking for advice on how to handle a tricky legal situation or a challenging client relationship. You can be the attorney who starts a group email thread or Listserv that allows attorneys to post questions and share feedback relevant to your practice areas (while being careful to avoid sharing any confidential client information).

You also may have access through your state or local bar organization to mentoring by more senior lawyers with experience in dealing with the stress of running a law practice, and to mental health resources for lawyers who are dealing with anxiety, depression, and burnout, all of which affect lawyers in significant percentages. The ABA

maintains a [Directory of Lawyer Assistance Programs](#) in each state, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. Lawyers should view asking for help not as a sign of failure or weakness but as a fulfillment of their ethical obligation to competently and diligently represent their clients.

The Challenging Pace of Modern Law Practice

Like other professionals, lawyers who are struggling to keep up with their day-to-day responsibilities often feel ashamed of their inability to “do it all.” And the pressure on lawyers has never been more intense. Emails continually stream into our inboxes, even when we are asleep; pleadings are e-filed and immediately available for review and analysis; clients expect quick turnarounds and 24/7 access to their lawyers. When a lawyer adds to this pressure by taking on too much work or by taking on cases outside of their area of expertise, it is not hard to imagine that lawyer becoming overwhelmed. When red flags start popping up, the lawyer has an ethical obligation to clients to evaluate whether the lawyer can competently and diligently continue with their entire caseload, or whether certain matters will need to be referred out. A lawyer should also consider it a best practice to regularly examine their office operations to ensure that the lawyer has the tools necessary to deliver high-quality legal work in an efficient and cost-effective manner.

Erin K. Higgins serves as managing partner of Conn Kavanaugh and chairs the professional liability practice at the firm. During her 34 years of practice, Higgins has focused on representing lawyers, insurance agents and brokers, and other types of professionals in defending against errors and omissions claims. She also represents lawyers in disciplinary matters, having served a four-year term on the Massachusetts Board of Bar Overseers, and advises lawyers on ethics issues. Higgins speaks regularly on professional liability and ethics topics and is the coauthor of the Professional Malpractice volume of the Massachusetts Practice Series. Higgins also has served as an expert witness on legal ethics issues.