

What should I do if I am not satisfied with my attorney?

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Answer: Try and work it out, and if necessary, replace your attorney (only), but do not speak out to third parties about your dissatisfaction.

It is more common than it should be for a client to be unhappy with his lawyer. It is hardly ever a joyful task to address the issue. The author suggests to first try and work it out with your present counsel for many reasons, including to avoid the time and cost of replacing an attorney. If not, replace him in a professional manner. The author is not telling you what to do as much as he is telling you what not to do, which is complaining about your dissatisfaction to third parties, and this is why.

Complaining about your lawyer to third parties, very often being to the opposing lawyer or the judge, is simply a fools game. First understand that it shows that you do not understand that you and your lawyer are supposed to be on the same side. Second, it indicates a lack of awareness by displaying thinking that the third party can or should do something about it. Understand that the judge or opposing lawyer/side is not going to extend you further courtesies or cut you a break because you complain about your lawyer. Third, if the communication is to the lawyer on the other side, he is not permitted under ethical rules to communicate with a represented party directly and without the represented party's attorney present. Thus, trying to communicate to the other side's attorney shows ignorance of this fact. Fourth, it threatens and many times outright forfeits, the very important attorney-client privilege, which keeps your communications with your lawyer protected. Fifth, it will likely infuriate and embarrass your lawyer, who will likely then, if they can, terminate the representation. Yes, he will likely fire you. Understand that *in general* an attorney can terminate the engagement. In other words, although it may take some time, there is no rule, again, *in general*, that an attorney cannot unilaterally terminate the representation. Sixth, if you indeed do get fired, it will be more difficult to obtain another attorney when you openly complained about your (now) prior lawyer in the past. Lastly, what you say when you do complain can have harsh and unintended consequences.

Damage stemming from the third and last points above is illustrated in the case of *United States v. Bauzo-Santiago* where the criminal defendant was unhappy with his attorney and wrote a letter to the judge that stated in part:

I have a situation with my lawyer . . . he has no interest in my case . . . I do not have good communications with the lawyer . . . Because of these reasons I would like to ask of the Honorable Judge to change counsel . . . if possible. I want to take advantage to notify you that . . . **I have always accepted my responsibility as to guilt**, the only think that I ask you is that the time for the weapons law crime be a reasonable one.

No. 15-1280 (1st Cir. 2017) (emphasis added). This letter was docketed in the case by the clerk. Unsurprisingly the prosecution later introduced it as evidence at trial, where the defendant was found guilty.

On appeal, the defendant attempted unsuccessfully to argue that the letter should not have been admitted in evidence under Federal Rule of Evidence 410 that prohibits certain statements made in furtherance of plea bargaining in later proceedings. The federal appeals court correctly ruled that the letter was admissible at trial. Obviously, drafting and sending the letter was a major mistake as it was a statement that indicated he was guilty of the crimes he was charged with.

One interesting point is that at the time the defendant wrote and sent his letter, his lawyer had already filed a motion to withdraw that was pending and was eventually allowed. The point being that the letter was unnecessary and his lawyers were doing their job, at least to get out of the case.

Another interesting observation is the federal appeals court opinion itself displays a tone of mockery. It even refers to the letter as “THE SLIP” and twice before it gets to the part of describing the letter it makes comments that “the slip” is coming. This indicates that the court is expecting people to read the opinion after hearing the defendant made a big mistake and is looking for it. The point being that the opinion is embarrassing and highlights the defendant’s blunder. Another subtle point that a layman should glean from this is that to the legal world, complaining about your lawyer is perceived negatively, which may be being revealed intentionally or unintentionally by the opinion in this case because most mistakes of defendants are not highlighted in such a fashion.

The bottom line is that if you are unhappy with your lawyer, replace if necessary, but never speak poorly of your lawyer to third parties involved in your case or dispute, it is a fool’s game.

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