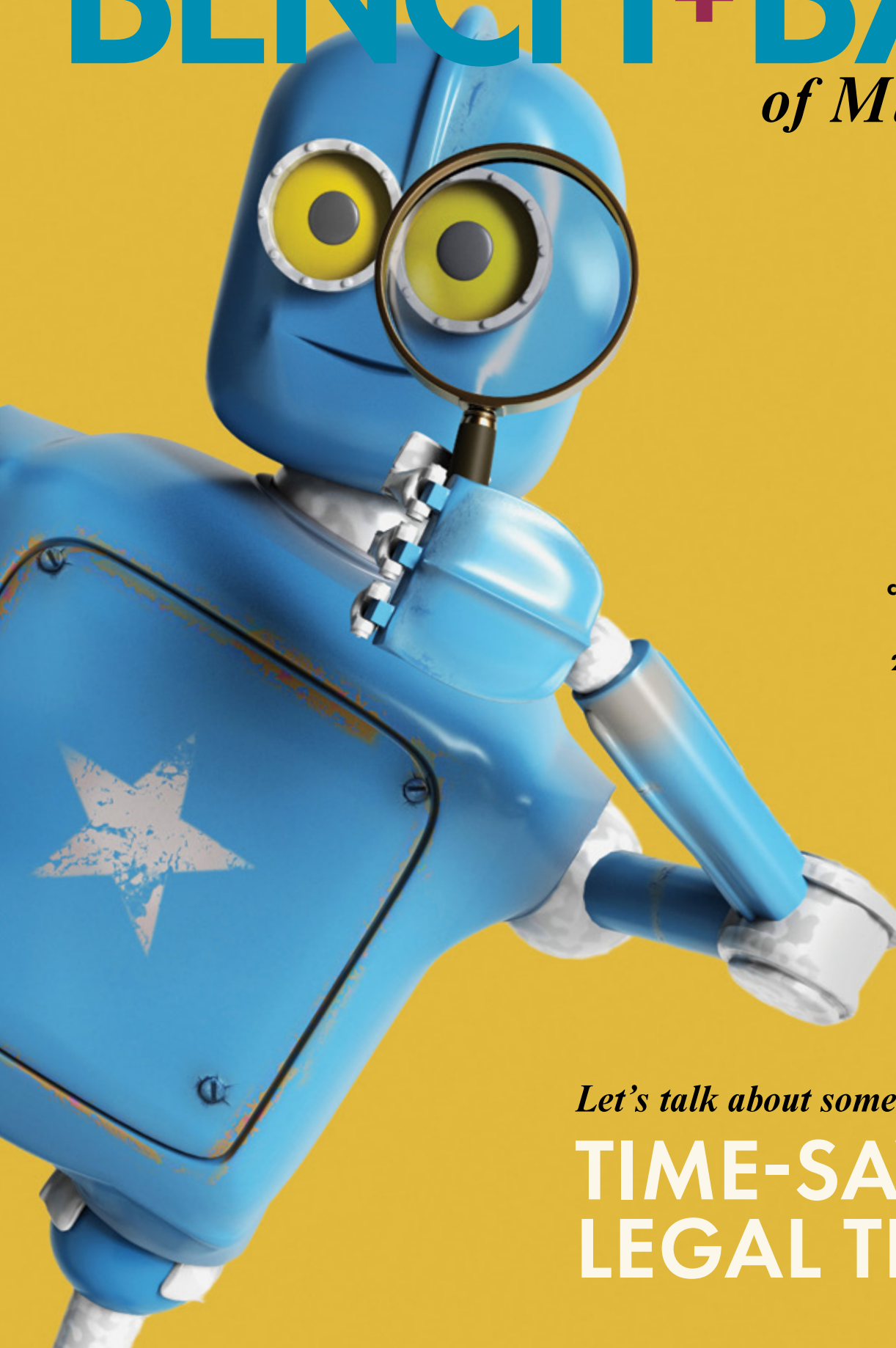


MINNESOTA STATE BAR ASSOCIATION

JANUARY/FEBRUARY 2022

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of Minnesota



**A lawyer's guide
to the Minnesota
legislative process**

**A Marvel-ous
copyright war**

**After Britney: An
FAQ on Minnesota
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***Bonus*
2022 Buyers' Guide**

Let's talk about some

TIME-SAVING LEGAL TECH

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TO ANSWER THE PHONE OR NOT TO ANSWER THE PHONE?

Notes on clients and boundaries

BY ELIZABETH DROTNING HARTWELL ✉ ehartwell@bestlaw.com



ELIZABETH DROTNING HARTWELL is a partner at Best & Flanagan LLP, where she practices family law.

Much has been written about the importance of attorneys imposing and maintaining professional boundaries—and the need to do so has been thrown into even sharper relief since the covid-19 pandemic forced many attorneys into work-from-home situations that dramatically blurred the lines between personal and professional time. As a family law practitioner, I am constantly assessing my practice and habits to ensure that my boundaries are functioning well. The old adage “put on your own oxygen mask before assisting others” may sound trite, but it’s truer than ever during a time when nearly everyone’s reserves feel depleted.

We are in a helping profession, but we cannot help our clients climb out of the ditch when we’re down in it with them. It is imperative that we maintain our own well-being, and aside from the ubiquitous encouragement to practice “self-care,” boundaries are the surest way I know to do that. And you don’t need to go it alone; there are many excellent resources available that can assist attorneys in building boundaries that work for them (Minnesota Lawyers Concerned for Lawyers and a wellspring of CLE seminars among them).

I BELIEVE THAT OUR ROLE AS COUNSELOR COMPELS US TO MODEL GOOD BEHAVIOR FOR OUR CLIENTS. NOT EVERY EMAIL (INDEED, VERY FEW EMAILS I CAN THINK OF) NEEDS A RESPONSE WITHIN 60 SECONDS.

This article isn’t about those resources. Although maintaining professional boundaries is crucial for our own well-being, I’d like to offer an additional reason you should do so which I hope is also compelling: Professional

boundaries are also a vital component in serving *our clients* well. Certainly, we are better able to help others when we are healthy ourselves, and our clients benefit when we are firing on all cylinders. But I believe it’s much more than that. Maintaining boundaries with clients helps them develop and retain reasonable expectations, problem-solving skills, and self-sufficiency. When we impose and maintain healthy boundaries with clients, we help

them with the very problems for which they hired us.

Let me explain. Every reader of this article is probably familiar with the ways technology has hindered attorney mental health and well-being in recent years. Gone are the days of pink “while you were out” message slips or mailing someone a letter. Email and smart phones have immeasurably improved our lives in some ways but have also created a monster: Instant responses are not only expected but often demanded. Tone of voice is often lost when texting; people reply to emails immediately and sometimes without thinking. I’ve done it, and my clients have definitely done it. I’ve trained myself over nearly 15 years of family law practice to never reply to an angry email without *at least* taking a walk around my office first (or, these days, my backyard). Do my clients, often going through a painful divorce or learning the ropes of co-parenting with no such habitual practices to draw from, have the same restraint? Of course—sometimes. Sometimes not.

I believe that our role as counselor compels us to model good behavior for our clients. Not every email (indeed, very few emails I can think of) needs a response within 60 seconds. When clients see us taking a beat and sending a deliberate, measured reply instead of an emotionally charged one, they may be encouraged to do the same.

Moreover, I fervently believe that setting reasonable expectations for client contact both defuses client anxiety and helps them develop stronger coping skills (which, in turn, further diminish client anxiety). If my client knows me to be a reliably prompt communicator who always responds to phone calls and emails within 24 business hours, then my client knows they will get a response to a Saturday email on Monday. Without an attorney to swoop in and fix it on Saturday, the client then has an opportunity to exercise their own judgment instead of relying on mine. Come Monday, we can debrief together and discuss what might be tried differently the next time.

I tested this theory with a totally unscientific survey of a handful of colleagues. Most attorneys and mental health professionals I talked with agreed that it’s best to have a policy regarding response times and communications outside business hours,

and to ensure clients actually know what the policy is. Exceptions to such policies are also made: when there is an emergency, when law enforcement is involved, when self-harm is a factor, when an attorney has had to be out of the office during business hours and doesn't want clients to receive less attention because of it. Some colleagues give their personal cell phone numbers to some clients but not all, preferring to first discern who is, as one put it, a "responsible communicator." After all, definitions of what constitutes an emergency vary dramatically. (The "boy who cried wolf" story is a perennial for a reason.)

While the flexibility of working from home is in many ways wonderful (and often necessary), it may have created the unintentional consequence of unreasonable expectations regarding response times as well. If I have been helping my children with online learning all day (which, hopefully, will be firmly a thing of the past by the time this goes to print), I may choose to save work for evening hours. But then, responding within 30 minutes to a client's email sent in the evening may unintentionally create the expectation that this will always be the case. Many of us employ email delay features for this reason, drafting email replies in the evening but not actually sending them until morning.

Whether we are available to respond or not, there may be strategic reasons not to do so immediately. Family law attorneys receive daily inquiries from clients: *My co-parent was an hour late to a parenting time exchange—what should I do?* *My child doesn't want to go with their other parent—what should I do?* *My co-parent said blah blah blah—what should I say?* I believe we actually do clients a disservice in responding to such questions too soon. Rather, we encourage and foster the growth of our clients' problem-solving and anxiety reduction skills when we *don't* respond right away. If we respond too readily, we may inhibit clients from coming up with their own solutions. If we wait, clients often come up with solutions on their own.

It's a delicate dance, of course; sometimes it's truly an emergency, and sometimes a situation may escalate to a level that was avoidable had you simply talked that client off the proverbial ledge. But we attorneys tend to be too hard on ourselves about such things, and to assign ourselves too much blame for problems we usually had no part in creating. This happened to

me almost all of the time when I was a new attorney; I would go home each night nearly frantic that I hadn't been able to fix a misunderstanding between co-parents or a parenting time exchange gone wrong. As I've grown in my practice, I've come to realize I'm not nearly that powerful. But my clients are: They can be the masters of their own fate, and it's an honor to help them do it (not to do it for them).

While writing this article, I confided to a colleague that I was a little nervous my chosen topic would convey that I can't be bothered to help my clients and won't answer their phone calls. Let me be clear: The title of this article is tongue-in-cheek. Good lawyers answer phone calls and emails. Good lawyers want their clients to feel cared for and listened to. Good lawyers want to help solve problems, not ignore them. However—and hear me out—good lawyers help their clients most when that help is constructive and impactful, not enabling or infantilizing. That requires us to be thoughtful about the time and manner in which we're trying to help. And, as my admittedly small sample of some of the most talented professionals in Minnesota demonstrated, I'm not alone in my convictions.

The advice in this piece isn't universally applicable; a criminal defense lawyer can't wait to respond to a Friday call from jail until sometime on Monday. In many practice areas, though—and family law is one—a lot of things can wait. Our clients hired us to guide them through a legal process so that they can return to their autonomous, if altered, lives. Truly, the ultimate goal is for the client not to need us anymore. If I'm available 24/7 to my client, how can my client ever get to that point?

Rule 1.4 of the Minnesota Rules of Professional Conduct, which addresses communication with clients, requires an attorney to promptly comply with reasonable requests for information. It's my resolute belief that "prompt" and "instantaneous" are not the same thing. And though it may come as a surprise, there's actually no rule of professional conduct requiring us to work on weekends. I encourage all my colleagues—particularly younger attorneys who have an opportunity to get this right earlier than I did—to develop, and keep, boundaries that allow you not only to preserve your own well-being, but to grow into a wise and trusted counselor. ▲



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