

You and Me and (Not Just) SCR 20:1.3

While procrastination is a human foible, it can have serious consequences for lawyers and clients. Telling someone else you'll do something, and when it will be done, might help to hold yourself accountable.

BY STACIE H. ROSENZWEIG

Put It Off Until Tomorrow, You've Hurt Me Enough Today.¹ I've known about my deadline for this column for months. I've also known that my fall was going to be particularly busy with work and a major election and my kid's soccer games and one might think I would get what I could out of the way, as soon as I could, to make way for the firehose I knew was coming.

Like many lawyers, I'm an inveterate procrastinator, so here I am, with the vice-presidential debate on TV and my laptop in hand.

You've probably been here, too. A study² reported by *The Global Legal Post* in 2017 suggested that British lawyers procrastinated for an average of 67 minutes per day while at work, primarily on social media but also by lingering at the coffee pot and even in the restroom. Anecdotally, many of us have very clean desks when we have major deadlines and at no other time.

Procrastination Is a Fact of Life

It's such a fact of life that the American Bar Association has weighed in via a comment to the Model Rules:

"Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness."³

I'm not here to defend procrastination, but I might take issue with the ABA's characterization of it as a "professional shortcoming." It's a very human thing. But why are we like this? There are various theories. Psychologists Fuschia Sirois

and Timothy Pychyl theorized that procrastination is a form of mood regulation – it's not done so much to avoid work but to avoid unpleasant feelings or mood associated with work, even if we know that we'll be worse off for waiting.⁴ We still convince ourselves that tomorrow will be different and even that *we* will be different.

It isn't really a time management issue or a problem with organization – most of us know how to manage our time properly and use some combination of day planners, electronic calendars, good staff, and Siri barking orders at us to make sure we have the tools to stay on task.

Negative Consequences of Procrastination

Regardless of the reason, I don't believe procrastination, by itself, is an ethical problem.

SCR 20:1.3 governs the duty of diligence, which is what most of us⁵ think about when we think about procrastination: "A lawyer shall act with reasonable diligence and promptness in representing a client." But SCR 20:1.3 does not extend to situations in which the work is ultimately



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done well and done on time but perhaps a little too close to the deadline for comfort – these are rules of reason.⁶

But that's really the problem – procrastination can lead to the work being not done well and not done on time. A search for “procrastination” in the OLR Compendium of Discipline⁷ yields only five results out of thousands of cases, and in each case, discipline stemmed from the results of procrastination, not the fact of procrastination. Given that disciplinary decisions reflect the record, not every factor that might have been at play, it is impossible to know how many other cases might involve procrastination at their core but not mentioned in the record.

It's more than just a diligence thing, too – blown deadlines and missed statutes of limitation may seem like obvious consequences, but work may not be as thorough or as accurate when you're rushed, as you often are close to the deadline. It affects lawyers' ability to adequately prepare what they need to prepare, even if they otherwise have the legal knowledge and skill necessary for representation. Procrastination can implicate competence.⁸

Also, if procrastination is done to avoid unpleasantness, it's tempting to avoid calling a client you don't particularly like talking to, particularly if you have bad news. But diligence and communication⁹ often go hand in hand.

Another common issue I encounter with procrastination is trust accounting, particularly with solo and small-firm

lawyers who do not have a dedicated staff person or service handling the books. SCR 20:1.15 requires lawyers to keep (and be able to produce during an investigation) detailed trust account records. Office of Lawyer Regulation guidelines¹⁰ suggest reconciliation reports should be prepared and printed at least every 30 days, so lawyers can be on top of their balances and quickly resolve any discrepancies.

But lawyers are busy, and we prefer to be busy with tasks that earn us money. Trust account reconciliation does not earn us money. When we're deep in trial preparation or during the trial, we can easily rationalize giving the urgent, client-facing (and remunerative) tasks priority. It seems as though the trust account reconciliation can wait. But then, after the trial, some other urgent matter will inevitably pop up, and a delay of a day or two turns into a few months, or more. It's far easier to chase a \$7 check that never cleared when the case is still fresh than it is when it causes your trust account to be unbalanced years later.

How to Avoid Procrastination

So, what do we do about this? As with explanations as to why we procrastinate, there are many proffered solutions (while acknowledging we're never going to fully solve the problem). A 1998 article reprinted in the *Wisconsin Lawyer*¹¹ suggested breaking tasks into small chunks, starting a project with any logical stage (not necessarily the beginning), and even scheduling a “hell day” devoted entirely to tasks you

just don't want to do. The article also suggested what seems like a variation on what novelist Raymond Chandler called the “Nothing Alternative” – he would block off time to either work or do absolutely nothing. Given those alternatives, he (and you) would eventually begin working, right? The article suggested simply sitting down with your project materials and forcing yourself to do nothing, not even write down ideas, for seven minutes, so once the time expires “you'll be itching to start.”

Sometimes, some of this advice can seem like “the way to stop procrastinating is to stop procrastinating.” If you're truly overwhelmed, consider contacting the State Bar of Wisconsin's Practice Management Program (Practice411™)¹² or the Wisconsin Lawyers Assistance Program (WisLap)¹³ for help and support. A qualified therapist or counselor can help as well.

As for me, I like “putting it out to the universe” – if there's something I need to do and I don't want to do it, I will let someone else know it's going to get done: “I will have the reply brief done and to the client before I leave the building.” That seems to create accountability, even if the “someone else” does not care when I get the brief done, and even if they won't be around to make sure I did it.

But, also, I understand that I will probably always be a procrastinator, so I try to build in time before things are really, truly due to account for that and just read the new issue of the *Wisconsin Lawyer* – or listen to some music about putting things off. **WL**

ENDNOTES

¹Dolly Parton, *Put It Off Until Tomorrow on Hello, I'm Dolly* (Monument Records, 1967).

²Global Legal Post, *Lawyers Procrastinate for Over an Hour a Day* (Aug. 23, 2017), <https://www.globallegalpost.com/news/lawyers-procrastinate-for-over-an-hour-a-day-19587501>.

³ABA Model Rule 1.3 comment [3]. The Model Rules of Professional Conduct are at https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/.

⁴Fuschia Sirois & Timothy Pychyl, *Procrastination and the Priority of Short-term Mood Regulation: Consequences for Future Self*, Soc. & Personality Psych. Compass, 7(2), 115-127 (2013), <https://doi.org/10.1111/spc3.12011>.

⁵And by “most of us,” I mean those of us who think about the supreme court rules whether we want to or not. You know what I mean.

⁶SCR chapter 20 preamble, ¶ 14.

⁷Wis. Ct. Sys., *Wisconsin Attorneys' Professional Discipline Compendium*, <https://compendium.wicourts.gov/app/search> (last visited Oct. 10, 2024).

⁸SCR 20:1.1.

⁹SCR 20:1.4.

¹⁰OLR Guidelines for Trust Account Records, <https://www.wicourts.gov/services/attorney/docs/guidetarecords.pdf> (last visited Oct. 10, 2024).

¹¹Margaret S. Spencer, *Healthy Lawyer: Overcoming Procrastination*, 71 Wis. Law. ___ (Sept. 1998), <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=71&Issue=9&ArticleID=21012>.

¹²State Bar of Wis., *Practice411 - Practice Management Program*, <https://www.wisbar.org/forMembers/PracticeManagement/Pages/Practice411-LOMAP.aspx>.

¹³State Bar of Wis., *Wisconsin Lawyers Assistance Program*, <https://www.wisbar.org/forMembers/WisLAP/Pages/Lawyer-Assistance-Program.aspx>. **WL**