

# *Hanging Out* *your Shingle* **LOUISIANA** *Style*



## CHAPTER 4

### Client Communications and Client Relations: BEGINNER'S TIPS



**L**awyers are in the communication business. Lawyers must communicate regularly and often must deliver bad news well. In so doing, lawyers need to be clear, concise and sympathetic. Lawyers should avoid the tendency to over explain and lapse into safe legalese to get over the tension of a difficult discussion. Rather, the lawyer should give the client time to process the information that was just delivered.

While communicating clearly, lawyers must also avoid creating unreasonable client expectations. When discussing judgment value of your client's case or whether the desired result that the client can be reached, lawyers should never guarantee a result.

Setting and managing a client's expectations from the beginning to the end is a critical skill for a lawyer.

This chapter augments the LSBA's online *Practice Aid Guide: The Essentials of Law Office Management*, in particular:

- Chapter 1, Establishing the Attorney-Client Relationship
- Chapter 2, Conflicts of Interest
- Chapter 3, Fees, Billing and Trust Accounts
- Chapter 4, Maintaining the Attorney Client Relationship and Law Office Procedure
- Chapter 7, Termination of Representation.

You are encouraged to refer to these chapters for more information and forms.



## FROM THE START

Effective communication starts from the very beginning.

### *The Conflict Check*

Before you accept a client, you need to determine whether you can deliver conflict free representation. While you may be tempted to avoid this step because you are just starting. Start developing your conflict list to which you will refer throughout your career. Inform potential client that you need to conduct a conflict check before accepting representation.

### *How Do I build a conflict database?*

Construct your database by assembling contact information for each matter that you accept. Be sure to include married and maiden names, “doing business as” identities and related corporate names. Include in your conflict database:

- Client Names
- Opponent names and potential opponents
- Opening and closing dates for files
- Nature of the matter

*Best practices:*

If you are conflicted and unable to resolve the conflict, send a written communication declining representation so that it is clear to the potential client that you are unable to accept representation. .

*Create easy access to client and case information:*

If you have accepted representation, ensure easy access to basic file information. Create an electronic file entitled “New Case Memo” or similar name for each matter with the following information:

- Client contact information
- Opponent information including opposing counsel contact information
- Case information (style of case, if lawsuit has been filed)
- Court contact information including clerk of court and judge chambers contact information.
- Fee arrangements with client

The New Case Memo assures easy access to contact information for clients, opponents and the court.

*The engagement letter or retention agreement:*

After you have accepted representation, it is important to memorialize your relationship with your client through written communication. Such a communication serves two important purposes: it helps manage your client’s expectations and also serves as excellent evidence should a complaint be filed against with respect to that representation.

You should draft a letter of engagement or retention agreement that you can adapt and use routinely. Have you client date and sign the letter.

An engagement letter or retention agreement should discuss:

- Scope of representation
- Fee arrangement
- Handling of expenses
- Retainer fees or deposits
- How and with whom you will communicate

*Be specific when defining the scope of representation.*

Lay clients will often assume that once you have accepted a matter, you are his or her attorney for all matters for the client. Be clear with your client about each matter that are assuming.

Specify the task. This is particularly important if you are representing a client for a particular limited purpose. Avoid overly broad statements. For example, “estate planning” could be construed by the client to encompass any and all aspects of estate issues that the clients might have, when you thought that you were being retained only to write a last will and testament.

Be as specific as possible. This is for your protection in the event that a client claims that you failed to do “x,” when you were not retained for task “x.”

For example, state that:

- “I will represent your interests with respect to the automobile accident on December 12, 2015,” OR
- “I am confirming that you have retained me for the limited purpose of drafting a petition for divorce, and are not wanting my services for any other task.”

Also specifically state that if you accept to do additional tasks beyond which is defined in your engagement or retention letter, you and your client will confirm this in writing.

#### *Fees and Costs:*

Your engagement letter or retention agreement should explain carefully your legal fee arrangement and the payment of fees and costs of the representation. At all times, the client should be aware, preferably in writing, of your financial arrangement with him or her. Specifically, your agreement should explain:

- The type of fee arrangement (hourly? contingency? flat fee?).
- The amount of any advance deposit that is necessary and how it will be drawn against.
- The billing cycle and when payment is expected.
- The amount that it is likely to cost the client.
- In the case of an hourly rate, the exact amount of the hourly rate and, if possible, an estimate of the hours necessary to handle the matter.
- In the case of a flat fee, exactly what will and will not be covered by the flat fee.
- In the case of a contingency fee, the percentage that will be charged by the lawyer and any other deductions that will come out of the recovery in terms reasonably understood by the client.
- The charges for identifiable direct costs/expenses, such as photocopies, long distance calls, and computer research.
- The additional expenses that will or are likely to be incurred on behalf of the client. This should be projected at the commencement of the relationship, if possible. As incurred, the exact amount of the expenses should be reported to and authorized by the client, even in contingency fee contract situations where costs are being advanced by the lawyer.
- Any changes in the basis or rate of the fee or expenses.

After the attorney-client relationship has commenced, the client should be informed preferably in writing of the status of the case on a periodic, preferably monthly, basis and the work being done to earn the fee.



**TIP:**

Include a sample calculation to show how expenses and costs, and your attorney fees are to be paid from a judgment or settlement proceeds. Many client complaints concern litigation costs and expenses because the client is not made aware of what costs and expenses the client will be paying. In a typical contingent arrangement, clients should be made aware that your fees will come out first and then expenses for the litigation.



**TIP:**

Explain the expenses that the client will bear whether they be filing costs, deposition costs, or expert fees. You might consider not charging for minor items such as copying costs (if minor), short phone calls and parking.

Familiarize yourself with Rule 1.5 of the Rules of Professional Conduct which governs fees. It is long and complicated, but the basic premise, regardless of the type of fee (contingent, fixed or hourly), is: *a lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses*. This means that the work and effort expended by you on the client's behalf should match the fee and expenses charged by an *objective* standard. The factors determining whether a fee is reasonable are set forth in Rule 1.5(a).

The bottom line is that even for contingency fee or flat fee matters, your file should reflect the work that you have done. Keeping time records is the best way to do that, as is keeping notes and documentation of your work. If you have spent the afternoon at the library, be sure the research makes it into the file. If you talked to someone on the phone, make a memo to the file. Not only will your efficiency be increased by this recordkeeping, but you will be protecting yourself from client complaints and dissatisfaction.

*Handling of Retainer Fee or Deposits:*

Your engagement letter or retention agreement should state the amount received from your client, if any, and an explanation of how the monies will be drawn.

*How to Communicate and With Whom:*

Your attorney client relationship is with your client, and not with their relative or best friend. Hence, communication about the representation is restricted to only your client (or experts). If your client desires to open the communication channels to someone other than the client, then have the client indicate that in writing and include that in your engagement letter or retention agreement. If the client does not grant that permission, explain to your client that you will not discuss the matter with anyone except the client. This issue arises most often with an incarcerated client and sometimes in a family law matter. Any changes to the communication arrangement should be followed up in writing. This combats any complaints that you did not return calls from the client's relatives or friends.

You might also describe how you will communicate with your client. If you intend to communicate with your client by email, indicate that. You might also set the ground rules about your communication with your client to reduce the expectation that you will be available on a 24/7 basis.





## COMMUNICATION ORGANIZATION AND MAINTENANCE

The challenge of client communication is due chiefly from the multiple sources from which it comes. Each communication is just as important as the other no matter how it arrives. Create strategies to preserve communications from whatever source. The typical sources are:

- In person
- Landline
- Cell phone
- Email
- Traditional Mail
- Texting

The method of storing and memorializing the communication is a challenge that can be met with certain strategies.

### *In Person:*

Take notes of your meetings or communications with your client. Create a memo to the file with the highlights of that communication so that you have a record of it. Place it in the correspondence subfile for the matter.

### *Landline:*

If you have a landline, always be able to retrieve landline messages remotely. Never limit the number of messages, and clear your voice mail box so that a client can always leave you a message. Prompt callers to leave their name and number. Include your email address should the client prefer to contact by email instead. Memorialize the gist of phone messages in an email to yourself so that you have a record of the message.

### *Cell Phone Strategy:*

Lawyers dispute the wisdom of giving clients a cell phone number because it gives the client the expectation that you will be available at any time. Consider whether you should give a client your cell phone number. If you use your cell to communicate with your clients, know your device. Select ring tones that will tell you from whom the incoming call is. Refrain from answering calls from numbers you do not know and let an unknown caller go to voice mail so you can assess whether you should return the call. Learn how to forward messages from phone to phone. As with a landline, never have a full voice mail box. Clear out your messages regularly. Email yourself about important client voice mail so that you have a record of it.

*Email:*

Businesses receive on average of 110 emails per day. The temptation is to respond to email as they arrive. However, studies indicate that doing so is inefficient. You might think that you are able to multitask, but studies indicate that multitasking is a myth. Recovery after reading a short email interrupts our train of thought and it takes minutes to get back on task. Further, bouncing from activity to activity impairs our ability to stay on task. Try to respond to email at set times during day (e.g., three times a day). Turn off email notifications in Outlook.

Discipline the email beast. Adopt a “Delete, Do, Delegate or Delay” rule where each email falls into one of these categories. Save and sort emails. With Outlook, drag and drop email to client e-folders. Most case management systems have built in email management. (Old school: print and file your email)



**TIP:**

Separate your business from personal email accounts.

*Traditional Mail:*

File hard copy and/or scan a pdf of the communication to appropriate computer file.



**TIP:**

Obtain a desk top scanner to reduce the amount of paper in hour office.

*Text messaging with clients?*

Is it wise to give your clients your cell phone number? Do you open yourself for a 24/7 availability expectation? Text messages are often misconstrued. Autocorrect disasters are common. If you do text with your clients, do not have substantive exchanges with your client, and never have settlement discussions via text. If you wind up having a substantive text exchange with your client, memorialize it by separate email or traditional letter to ensure a mutual understanding of the conversation. Best to save text exchanges for short messages as in “I am here.”

- For all communications, set a regular time of the day that you return messages from whatever source from which they come.
- Return client inquiries within week; not later.
- Return calls when call length can be controlled – at the end of the day or at lunch.
- Can’t return call? Acknowledge client’s message.
- **No Staff?** Send an email/voice mail/out of office assistant to explain.
  - TIP: “\*67” – Use this before dialing to conceal your number.
- **Staff?** Have staff call client and explain:
  - E.g., “She is in trial, but wanted you to know she received your message and that she will be returning your call as soon as she is able.”
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*What are you communicating with your client about?*

Advise them of anything with a date.

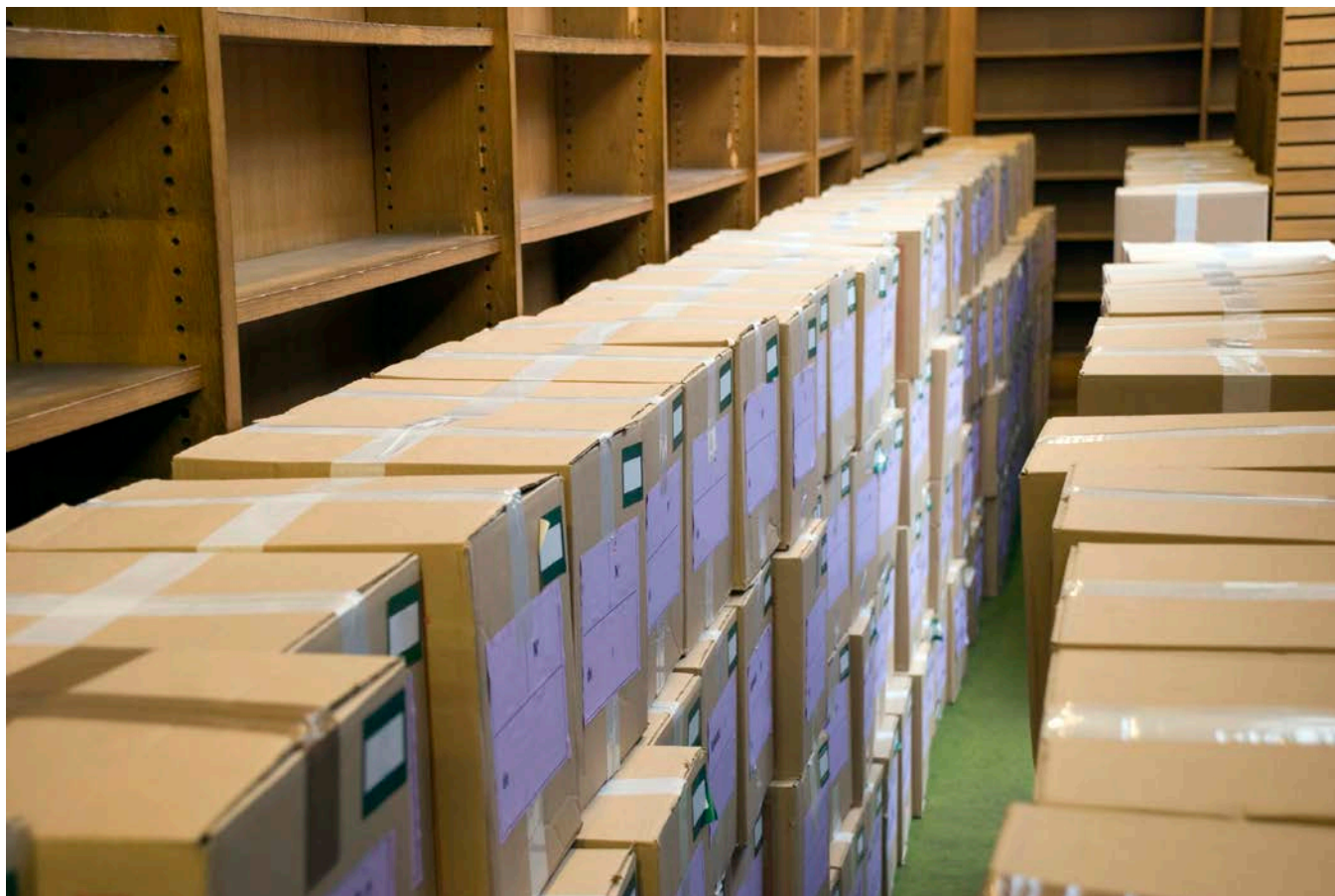
Advise Client of Pleadings, Deadlines, Court Orders, Settlement Discussion -



**TIP:**

Even if nothing is happening, communicate regularly to let them know that you are paying attention.

*Bad news?* Tell it and get it over with. Bad news rarely improves over time.



## FILE CLOSING:

Be clear, even at the end. Decide when you are closing the file. Send a closing letter to the client. Destroy duplicative documents. Return original documents to the client. The date you close the file will be important to the tolling of malpractice claims. When a matter closes is also relevant to conflict check.

Should you have a fee dispute with your client, never hold the file hostage. The file belongs to the client even if the client has not paid you. Also there is no such thing as a nonrefundable fee. To say so will put you amiss with disciplinary counsel.

See Appendix # 9, Client Communication Checklist.





## PROCRASTINATION:

Every lawyer suffers from this demon from time to time. It is a defeatable enemy. It is caused by disorganization, fear and/or perfectionism.

“The best is the enemy of the good.”

*Francois-Marie Arouet (a.k.a. Voltaire) (1694 - 1778).*

If you have a difficult client or bad news to deliver, remember the frog rules:

- **Frog Rule #1.** “If you have to eat two frogs, eat the ugliest one first.”
- **Frog Rule #2.** “If you have to eat a live frog at all, it doesn’t pay to sit and look at it for very long.”

Adapted from Mark Twain and Brian Tracy, *Eat That Frog*

*Overwhelmed? You are not alone. Take care of yourself. Don’t isolate; ask for help. Associate another attorney if you need to. Start with the worst file. Chip away at it.*