

# Chapter 1

## Establishing the Attorney-Client Relationship

The establishment of the attorney-client relationship involves two elements: a person seeks advice or assistance from an attorney; and the attorney appears to give, agrees to give or gives the advice or assistance. **If the client reasonably believes that there is an attorney-client relationship, then the lawyer has professional obligations to that client.** Further, lawyers also have certain professional obligations to non-clients, including former clients (*see* La. Rule of Prof. Conduct 1.9) and prospective clients who ultimately do not retain the lawyer (*see* La. Rule of Prof. Conduct 1.18) Therefore, it is essential that both attorney and client understand whether the attorney-client relationship exists.

Before establishing an attorney-client relationship, you will need to determine if you have a conflict of interest prohibiting the representation. Because of the importance of this inquiry, Conflicts of Interest are addressed in a separate section in this Guide.

Several steps lead to the formation of the attorney-client relationship:

- initial client contact;
- screening;
- interview;
- accepting or declining representation; and
- confirming the acceptance or declination in writing.

The following forms will assist you and your office in the decision whether to accept the representation and how to do it.

### Initial Client Contact and Screening

The first contact a prospective client usually has with your office is by telephone, although many individuals now initially contact potential attorneys via the internet including email. Courteous, respectful treatment of all callers is important. Likewise, a prompt response to an email from a client or potential client is important. Whether the initial contact was via telephone or email, the receptionist or designated staff member should complete a Consultation Form to obtain the basic information for you to determine if you even want to interview the potential client and to assist in screening for conflicts. A major consideration is whether you have the time and the necessary competence to handle the case. If not, you should refer the prospective client to multiple other attorneys, if possible, and explain that the prospective client should act without delay to protect his or her rights. Failure to know or properly apply the law accounts for many malpractice claims in Louisiana.

Also, you should use the form to determine if there is an obvious conflict. As discussed in the Conflicts Section, determining conflicts of interest is an ongoing process, but many conflicts can be avoided by initial screening.

## Interview

The initial interview is not just a way for the prospective client to determine whether to hire you. It's also your opportunity to decide whether you have a conflict of interest and cannot represent the client, whether you want to represent the client, and whether you have the competence to do so. It is also a key opportunity to discuss the scope of the representation of the potential client. You should have the prospective client complete the remainder of the Consultation Form, which you should review immediately before the meeting. Be thorough and listen carefully, both to what is said and how it is said.

First impressions are key. The prospective client should be warmly welcomed by you and your staff, thanked for coming, treated with respect, and seen timely.

If the initial interview reveals that you are not qualified to practice in the area of law at issue, decline the representation. If you take the case anyway, disclose your limitations. Do not make misrepresentations about experience.

**Communication** is key to a positive attorney-client relationship. Ideally, communication with the client should not be set out separately as a discrete task; it should be a part of every action you take. However, so many attorneys have difficulty with this aspect of representation that it is worth reviewing. Communication in the initial consultation involves (at a minimum) making sure that:

- the client understands the scope of the representation;
- the client understands the type of fee arrangement, what fees are charged, why, and what they will be applied to;
- the client understands how client trust money will be used;
- you have all the facts you need to make sure the client's objectives have a good faith basis;
- the client understands what additional actions on her part are necessary to handle the matter (additional documentation, last attempt before suit to come to terms with opposing party, etc.);
- the client understands that you cannot guarantee a particular result;
- you understand exactly what it is that the client wants you to do.

Setting reasonable client expectations is also an essential component of the communication process. Make sure your new client knows and understands:

- the client knows and understands any limitations on the scope of the representation;
- you practice in a professional fashion, are civil to opposing counsel, and that the client should not expect you to employ "Rambo" litigation tactics;
- that while you will make every effort to make yourself available for your client when he or she calls, that may not always be possible because you are expected to address the concerns of other clients and that his or her case is not the only case on your docket;
- explain your policy of communicating regularly—including returning telephone calls and responding to emails—and live up to your policy;
- from the outset of the matter, make sure your client understands the strengths and weaknesses of his or her case;
- explain what the client can and cannot expect over the course of the matter, e.g., litigation is costly, risky, uncertain, and time-consuming; and
- never promise a certain result, e.g., an acquittal in a criminal case or a dollar amount of recovery in a personal injury case. It is always best to manage expectations (without promising, of course) and over-deliver.

## Client Screening — Avoid the Difficult Client

As a rule, you should avoid inordinately demanding clients, untruthful clients, those with unreasonable expectations, uncontrollable clients, and clients with a personal vendetta. Also, clients who “lawyer shop” or have previously been represented by multiple attorneys in the same or a similar matter may be difficult to control or please.

### Accepting or Declining Representation and Confirming in Writing

After you have screened a prospective client, conducted the conflicts check<sup>1</sup>, and gathered information and impressions through an initial interview, you must tell the client whether you will represent her, **preferably in writing**. That writing should clearly define the scope of the attorney-client relationship. The best practice is to discuss the scope of the representation with the potential client in the initial consultation and then to confirm that in writing in the engagement letter. View sample letters of engagement and non-engagement on the internet or later in this chapter.

All clients should receive a written contract and/or engagement letter. The engagement letter welcomes a new client, confirms the scope of the representation, and clearly sets forth the essential terms applicable to the engagement including the fee arrangement. The engagement letter may also include useful provisions such as the client’s consent to electronic or cloud storage of file materials and authorization to communicate with the client via email. The fee arrangement should be put in writing and either made part of that engagement letter or attached to it. **Contingent fee contracts are required to be in writing. See La. Rule of Prof. Conduct 1.5(c).** Fee arrangement letters can be found in the Fees and Billing Section of this Guide.

When you decide not to represent someone, you should send non-engagement letters so it will be abundantly clear that you are not representing the prospective client and that you have no further professional obligations to the person.<sup>2</sup> You should try not to make any judgment regarding the merits of the person’s case, but should urge the person to be mindful of time constraints and suggest that she may want to confer with another attorney. You should return any original documents the prospective client left for review.

If you decide to represent an existing client in a new matter, you should send a letter explaining that relationship. Again, the fee arrangement for that matter also should be confirmed in writing.

The following is a quick checklist to ensure that you are taking the major steps in establishing attorney-client relationships or in declining representation. Forms follow the checklist.

## Additional Resources

- ▶ Ciolino, Dane S., *Louisiana Professional Responsibility Law and Practice*, available at [www.lalegaethics.org](http://www.lalegaethics.org).
- ▶ Foonberg, Jay G., *How to Start and Build a Law Practice*, Millennium Fourth Edition (American Bar Association, 1999).
- ▶ Jones, Nancy Byerly, *Easy Self Audits for the Busy Law Office* (American Bar Association, 1999).
- ▶ Plattmier, Charles B., *Ethics: De-mystifying the ODC*, available at <http://files.lsba.org/documents/Committees/DemystifyingDisciplinaryProcess.pdf>

1. See Chapter 2, Conflicts of Interest.

2. A non-engagement letter sent to a client reduces the chance of inadvertent formation of an attorney-client relationship because a purported client’s belief that the relationship exists is less reasonable when that client has been advised that no such relationship exists. *See St. Paul Fire & Marine Ins. Co. v. GAB Robins N. Am., Inc.*, 999 So. 2d 72, 77 (La. App. 4 Cir. 2008) (“The existence of an attorney-client relationship turns largely on the client’s subjective belief that it exists. ... However, a person’s subjective belief that an attorney represents him must be reasonable under the circumstances.”).