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ESTABLISHING
the Attorney-Client Relationship

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 check¹, 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.² 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.
- ▶ 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.”).

Establishing the Attorney-Client Relationship Checklist

Use this checklist to ensure that you are taking all the proper steps to successfully establish the attorney-client relationship or decline representation.

- Have receptionist or staff member complete initial section of Consultation Form.
- Have staff member do initial conflicts check, but still make any judgment calls yourself.
- Review the Consultation Form to determine whether to refer the case or to have the receptionist set the appointment.
- Have the prospective client complete the Consultation Form when she arrives for the appointment.
- Review the Consultation Form immediately prior to interviewing the potential client.
- Do full consultation with the prospective client, including completion of substantive interview forms for certain areas of the law.
- Explain to the prospective client whether the firm will accept or decline representation, the scope of the representation, the fee arrangement, and what is still needed from the client.
- Send engagement or non-engagement letter to the prospective client.
- If you agree to handle a new matter, send another engagement letter to reflect the additional representation.

Appointment Date & Time: _____

Interviewing Attorney: _____

Consultation Form¹

TO BE COMPLETED BY STAFF MEMBER FOR PROSPECTIVE CLIENT²:

Date: _____

Name: _____

Phone Number: _____

Email: _____

Alternate Contact Name & Phone Number: _____

Re: _____

Served with papers: _____ When: _____ Court Date: _____ Judge: _____

What Parish: _____

Other Side's Name: _____

Referred By: _____

Have you or anyone you know been here before? _____ Who? _____

Do you have or have you spoken to an attorney in this matter? _____ Who? _____

Told to bring in paperwork pertaining to consultation: _____

Adverse Party Checked: _____ OK? _____

Conflicts List Checked: _____ OK? _____

Non-Client Interview List Checked³: _____ OK? _____

Form completed By: _____

Attorney's Instructions: _____

Continued

¹ Note to Attorney: Modify this as needed.

² The first page of this form is used by the staff member to obtain basic information from a potential client prior to setting an appointment. The attorney will review it and give additional instructions.

³ The Non-Client Interview List is a list of people interviewed and the attorney-client relationship was never established. There may be a conflict if confidential information was obtained from the non-client.

TO BE COMPLETED BY PROSPECTIVE CLIENT BEFORE THE CONSULTATION⁴:

Client: _____ DOB: _____ SS#: _____

Address: _____

Home Telephone: _____ Cell: _____ Fax: _____

Personal email: _____ Work email: _____

Client's Employer: _____

Client's Position: _____

Employer Telephone: _____

Spouse: _____

Spouse's Employer: _____

Spouse's Employer Telephone: _____

Emergency Contact(s), (Name) (Relationship) (Telephone): _____

Names of Associated and/or Related Parties: _____

Name of Opposing Counsel: _____

Please state briefly the nature of the problem you wish to discuss with the attorney: _____

TO BE COMPLETED BY STAFF:

Initial and Date the Following Items When Completed:

- _____ Fee Contract
- _____ Engagement Letter
- _____ Case Entered on Master List
- _____ Prescription/Time Deadline/Hearing Date

Form Completed By: _____

⁴ Prospective client completes this section when she comes in for appointment immediately prior to the consultation. The attorney again searches for conflicts before seeing the prospective client.

Sample Engagement Letter (General)

June 20, 20—

Ms. Jane J. Client
123 Main Street
Anytown, Louisiana 45678

Dear Ms. Client:

We enjoyed meeting with you on _____ concerning our representation of you against _____. We have completed a conflict of interest search and determined that there is no conflict at this time, so we can accept this matter. We will be doing the following to represent you:

Our engagement is limited to your claim against _____ for _____.

Our fees are outlined in our fee agreement, which we have already discussed and a copy of which is enclosed.

Note to Attorney: If agreement has not yet been signed, send two signed copies of fee agreement and request that the client sign one and return it to you.

In the interest of facilitating our services to you, we may communicate by facsimile or email transmission, send data over the internet, store electronic data via computer software applications hosted remotely on the internet, or allow access to data through third-party vendors' secured portals or clouds. Electronic data that is confidential to you may be transmitted or stored using these methods. We may use third-party service providers to store or transmit this data. In using these data communication and storage methods, our firm employs measures designed to maintain data security. We use reasonable efforts to keep such communications and data access secure in accordance with our obligations under applicable laws and professional standards. We also require all of our third-party vendors to do the same.

You recognize and accept that we have no control over the unauthorized interception or breach of any communications or data once it has been sent or has been subject to unauthorized access, notwithstanding all reasonable security measures employed by us or our third-party vendors. You consent to our use of these electronic devices and applications and submission of confidential client information to third-party service providers during this engagement.

To enable us effectively to render the services outlined above, you agree to cooperate fully with us in all respects relating to the matters for which we have been retained, to fully and accurately disclose to us all facts that may be relevant to those matters or that we may otherwise request, and to keep us apprised of developments relating to the matters. We agree to do the same. You also will make yourself reasonably available to attend meetings, hearings, and other proceedings as and when necessary. Your responsibilities will also include approving negotiation and litigation strategy; approving causes of action and parties to any litigation; and determining acceptable terms of any compromise, settlement or agreement. To help you with your responsibilities, we agree to keep you apprised of what is transpiring in your matter by providing regular status reports.

Continued

Either at the beginning or during the course of our representation, we may express our opinions or beliefs concerning the matter or various courses of action and the results that might be anticipated. Any such statement made by any member or employee of our firm is intended to be an expression of opinion only, based on information available to us at the time, and must not be construed by you as a promise or guarantee of any particular result. No guarantees are possible in matters such as this.

If these terms and conditions expressed in this letter are acceptable to you, please confirm your acceptance by signing a copy of this letter in the space provided below and returning it to me. Should you wish to discuss any aspect of the letter or any of the terms of our proposed engagement, please feel free to call me at _____.
Thank you for choosing our firm to represent you in this matter.

Sincerely,

FIRM NAME

Attorney Name

ACCEPTED AND AGREED:

Jane J. Client

Date: _____

Enclosure

(Note: See fee agreements in Fees and Billing Section of Guide)

Sample Non-Engagement Letter (General)¹

June 20, 20—

Ms. Jane J. Non-Client
123 Main Street
Anytown, Louisiana 45678

RE: Non-Engagement Letter

Dear Ms. Non-Client:

Thank you for coming into my office yesterday for a consultation. As we discussed, I will not be able to represent you because

It is in your best interest to consult with another attorney as soon as possible. Most legal rights have strict time limitations, so you may have a deadline to file something soon. For this reason, I suggest that you contact another attorney immediately if you plan to pursue this matter.

Sincerely,

FIRM NAME

Attorney Name

¹ While not required, you may wish to consider in some instances not only mailing this letter U.S. Mail, but also mail by U.S. Mail Certified Return Receipt Requested.

General Information Questionnaire

(Privileged and Confidential)

Note to Attorney: Questions 1-12 in this questionnaire are designed to be useful in most civil and criminal representations. Questions 13-20 should be added when screening prospective personal injury litigation clients. The questionnaire can be completed by the attorney during a first meeting with prospective clients or mailed to the client in advance and reviewed at a first meeting.

PLEASE COMPLETE CAREFULLY. USE ADDITIONAL PAGES IF NECESSARY.

1. Personal and Family History

Full name _____

Social Security Number _____

Present home address _____

Home Telephone: _____ Cell: _____ Fax: _____

Personal email: _____ Work email: _____

2. Have you ever used, or been known by, any other name than that shown above? If so, list here each other name, and state when and why each other name was used:

3. State the addresses where you have resided during the past 10 years, and the period of time at each residence, including dates:

4. Place of birth _____ Date _____

5. Are you presently married? _____

Date of marriage _____ Place of marriage _____

Full name of spouse _____

Have you ever been divorced or legally separated? _____

6. List the names, ages and addresses of all those (including children) who are dependent upon you for support, and your relationship to each:

NAME	ADDRESS	AGE	RELATIONSHIP
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Continued

7. Employment History

Most recent employer _____
Employer's address _____
Ending date _____ Beginning date _____
Job classification _____
Beginning pay rate _____ Ending pay rate _____
Reason(s) for leaving _____

Employer prior to last listed _____
Employer's address _____
Ending date _____ Beginning date _____
Job classification _____
Beginning pay rate _____ Ending pay rate _____
Reason(s) for leaving _____

8. Educational Background

What education have you had, including any special job training?

9. Military Background

Have you been in the military service? _____

If so, give branch of service: _____ If so, give service number: _____

Type of discharge _____

Dates of service _____

Have you ever been rejected for military service because of physical, mental or other reasons? _____

If so, explain: _____

Do you have any service-connected injuries or disabilities? _____

If so, give details: _____

Percentage of disability _____

Present condition of service-connected injury or disability _____

Do you receive payments for service-connected injuries? _____

Continued

10. Prior Claims and Lawsuits

Many cases have been damaged beyond repair by a history of other claims and lawsuits which your attorney did not know about. It is **NOT** the fact that one has had other claims or lawsuits that is important, for one will not be penalized by a court or jury if the claims are reasonable and genuine. It is the **DENIAL** of previous claims and suits that damages the case. List every claim you have ever made for personal injury or property damage, and give details:

- a) Date _____ Nature of claim _____
Against whom _____ Suit filed? _____
Result _____

- b) Date _____ Nature of claim _____
Against whom _____ Suit filed? _____
Result _____

- c) Date _____ Nature of claim _____
Against whom _____ Suit filed? _____
Result _____

11. Police Record

Under the rules of evidence, there are circumstances under which a person's prior criminal record may be relevant in a proceeding. The other attorney will make a complete investigation of your background, and we must be **PREPARED AGAINST** development of unfavorable evidence. List here any arrest(s) and state the date, place, charge, court, case number and outcome:

- a) Arrest date _____ Arrest place _____
Charge _____
Court _____ Case number _____
Outcome _____

- b) Arrest date _____ Arrest place _____
Charge _____
Court _____ Case number _____
Outcome _____

- c) Arrest date _____ Arrest place _____
Charge _____
Court _____ Case number _____
Outcome _____

Continued

12. Worker's Compensation

Have you ever made a claim for Worker's Compensation? _____

If so, when was the date of your injury? _____

Are you receiving payments at present? _____

If so, explain: _____

Who is handling your Worker's Compensation action? _____

Are you receiving disability payments from any source other than Worker's Compensation at present? _____

If so, explain: _____

13. Date of Injury or Accident

(If you are not certain about a specific date, please discuss with the lawyer immediately.)

Location of accident/injury _____

Names of other people involved in the accident/injury: _____

Have you missed any time from work as a result of your injury? _____

If so, list the dates you were unable to work: _____

FROM: _____ TO: _____

14. Prior Physical Examinations

List here EVERY physical examination you have ever had during the last five years, for any purpose, including employment, promotion, insurance, selective service, armed forces, etc. State date, name of doctor, and result, as fully as you can recall.

a) Date _____ Place _____

Name of doctor _____

Purpose _____

Result _____

b) Date _____ Place _____

Name of doctor _____

Purpose _____

Result _____

c) Date _____ Place _____

Name of doctor _____

Purpose _____

Result _____

Continued

15. Prior Accidents and Injuries

Failure to mention other accidents or injuries can undermine a lawsuit, no matter how trivial they may seem. List here every such incident, whether it resulted in a claim for damages or not, stating the date, place, nature of the accident and extent of your injuries. If none, so state:

16. Illness or Disease

No matter how trivial an illness, either before or since your accident, we must know about it. This is particularly true if there is any connection with your present physical complaints. At the trial, the defendant will have a complete history of your past physical condition, made available through medical and hospital records, veteran’s records, insurance records, etc.

a) Date _____ Nature of illness _____
Duration _____ Treated by _____
Hospitalized? _____ If so, give dates: _____
Name and address of hospital _____

b) Date _____ Nature of illness _____
Duration _____ Treated by _____
Hospitalized? _____ If so, give dates: _____
Name and address of hospital _____

c) Date _____ Nature of illness _____
Duration _____ Treated by _____
Hospitalized? _____ If so, give dates: _____
Name and address of hospital _____

Do you now, or have you ever had trouble with:

eyes? _____ ears? _____
If so, give details: _____
Have you ever worn glasses? _____ an artificial eye? _____
a hearing aid? _____ If so, give details: _____

Have you ever worked with radioactive substances, asbestos or any other substance alleged to cause diseases, such as cancer? _____

Have you ever been denied life or health insurance? _____
If so, by which company and why? _____

17. Alcoholism, Drug Addiction and Venereal Disease

If you have ever been treated for these conditions, please be sure to discuss it with your attorney **CONFIDENTIALLY**, long before your case goes to trial.

Continued

18. The Injury

State all injuries known to be a result of the accident: _____

Length of time confined to bed _____

Length of time confined to house _____

State present physical condition, including scars, disabilities, deformities, discomforts, etc., due to the injuries:

19. List all physicians and surgeons you have seen for your injury/injuries.

a) Name _____
Address _____
Nature of treatment _____ Still under care? _____

b) Name _____
Address _____
Nature of treatment _____ Still under care? _____

c) Name _____
Address _____
Nature of treatment _____ Still under care? _____

d) Name _____
Address _____
Nature of treatment _____ Still under care? _____

e) Name _____
Address _____
Nature of treatment _____ Still under care? _____

20. List all nurses, therapists or other health care professionals that you have seen.

a) Name _____
Address _____
Nature of treatment _____ Still under care? _____

b) Name _____
Address _____
Nature of treatment _____ Still under care? _____

c) Name _____
Address _____
Nature of treatment _____ Still under care? _____